Case No: 2007 Folio 942

Neutral Citation Number: [2012] EWHC 2463 (Comm)

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings, London EC4A 1NL

Date: 31st August 2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim Nos: HC08C03549; HC09C00494; HC09C00711

Before:

MRS JUSTICE GLOSTER, DBE

Between:

Boris Abramovich Berezovsky	**Claimant**
- and -	
Roman Arkadievich Abramovich	**Defendant**
Boris Abramovich Berezovsky	**Claimant**
- and -	
Hine & Others	**Defendants**

Laurence Rabinowitz Esq, QC, Richard Gillis Esq, QC, Roger Masefield Esq, Simon Colton Esq, Henry Forbes-Smith Esq, Sebastian Isaac Esq, Alexander Milner Esq, and Ms. Nehali Shah
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Ali Malek Esq, QC, Ms. Sonia Tolaney QC, and Ms. Anne Jeavons
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appeared for the **Anisimov Defendants** to the Chancery Actions
David Mumford Esq (instructed by **Macfarlanes LLP**)
appeared for the **Salford Defendants** to the Chancery Actions
Jonathan Adkin Esq and Watson Pringle Esq
(instructed by **Signature Litigation LLP**)
appeared for the **Family Defendants** to the Chancery Actions

Hearing dates: 3rd – 7th October 2011; 10th – 13th October 2011; 17th – 19th October 2011; 24th & 28th October 2011; 31st October – 4th November 2011; 7th – 10th November 2011;

14th - 18th November 2011; 21st – 23 November 2011; 28th November – 2nd December 2011; 5th December 2011; 19th & 20th December 2011; 17th – 19th January 2012.

Further written submissions: 26th January 2012; 1st February 2012; 2nd February 2012; 7th February 2012; 6th March 2012; 13th March 2012;

Judgment
As Approved by the Court

MRS JUSTICE GLOSTER, DBE

Mrs Justice Gloster:

Section I - Introduction

1. In action 2007 Folio 942 ("the Commercial court action") the claimant, Boris Abramovich Berezovsky ("Mr. Berezovsky"), sues the defendant, Roman Arkadievich Abramovich ("Mr. Abramovich") for sums in excess of US dollars ("$") 5.6 billion.

2. Both men are Russian citizens and are, or were, successful businessmen. Mr. Berezovsky fled from Russia to France on 30 October 2000, following a public dispute with Vladimir Putin ("Mr. Putin"), who was elected President of the Russian Federation in March 2000. Mr. Berezovsky subsequently settled in England and applied for asylum in the United Kingdom on 27 October 2001. His application was accepted on 10 September 2003. He is now resident in England. At the time Mr. Berezovsky fled Russia, he had substantial commercial interests in the Russian Federation. According to his United Kingdom tax returns, he remains domiciled in Russia for tax purposes and intends to return to Russia when the political situation permits him to do so.

3. Mr. Abramovich frequently visits England because of his ownership of Chelsea Football Club. He also had substantial commercial interests in the Russian Federation at material times for the purposes of this litigation.

4. Jurisdiction in the action was founded on service, or attempted service, of the claim form personally on Mr. Abramovich, whilst in England, and his subsequent decision not to challenge the jurisdiction of the English court. In circumstances where Mr. Berezovsky was unable to return to Russia without facing arrest, and what were accepted, on Mr. Abramovich's part, to be the difficulties facing Mr. Berezovsky in obtaining a fair trial, if he had attempted to bring civil proceedings in Russia, that was no doubt a realistic decision.

5. Mr. Berezovsky brings two claims against Mr. Abramovich. The first claim relates to an interest which Mr. Berezovsky alleges that he had in OAO Sibirskaya Neftyanaya Kompaniya ("Sibneft"), a Russian joint stock company, which was created by Decree Number 872 of the President of the Russian Federation, dated 24 August 1995 ("the August 1995 Decree"), as part of a programme of privatisation ("the Sibneft claim"). Sibneft subsequently became a major integrated oil company generating large profits. The second claim relates to an interest which Mr. Berezovsky alleges that he had in OAO Russkiy Alyuminiy, a company registered in Moscow on 25 December 2000 ("RusAl"), which became a substantial company in the Russian aluminium industry ("the RusAl claim").

The Sibneft claim

6. Although the formulation of the claim has changed over time, by the start of the trial[1], the Sibneft claim, was, in broad summary, as follows:

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[1] As set out in the Re-re-re-Amended Particulars of Claim dated 5 October 2011 and Mr. Berezovsky's opening submissions.

i) prior to the August 1995 Decree, Mr. Berezovsky, one of his close business associates, Mr. Arkady (or Badri) Patarkatsishvili ("Mr. Patarkatsishvili"), a Georgian citizen, and Mr. Abramovich agreed orally to acquire a controlling interest in any oil company carrying on the business formerly carried on by OAO Omsk Oil Refinery ("Omsk Oil"), an oil refinery located in Siberia, and OAO Noyabrskneftegaz ("Noyabrskneftegaz"), an oil production company; in the event, the oil company which acquired such businesses was Sibneft[2];

ii) in the period leading up to the August 1995 Decree the three men also orally agreed to the effect that:

a) any ownership interest which the three men acquired in Sibneft, would be held for their benefit as follows: 50% for the benefit of Mr. Abramovich on the one hand, and 50% for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili, on the other hand;

b) profits would be distributed in the same percentage proportions; and

c) any future business interests which they acquired (whether or not related to Sibneft) would also be shared between them in the same proportions[3];

(I refer to this alleged agreement together with the alleged agreement referred to in sub-paragraph i) above as "the alleged 1995 Agreement");

iii) the alleged 1995 Agreement would be governed by Russian law[4];

iv) it was orally agreed between the three men in 1996 ("the alleged 1996 Agreement") that:

a) Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would arrange matters so that Mr. Abramovich, or his companies, was the legal owner of all the Sibneft shares which had been acquired pursuant to the 1995 Agreement;

b) Mr. Berezovsky and Mr. Patarkatsishvili would continue to have the rights and interests which they had acquired pursuant to the 1995 Agreement in the shares that would be held by Mr. Abramovich;

c) Mr. Abramovich would upon request, transfer to Mr. Berezovsky and/or Mr. Patarkatsishvili shares equivalent to their interest in Sibneft on the basis of the percentage split referred to above;

NB: In this judgment I have referenced certain passages in the evidence in footnotes. These footnoted references should not in any way be regarded as exclusive, exhaustive, or even the principal, references to the evidence upon which I relied in reaching my conclusion in relation to a particular topic. Often the footnoted reference is no more than a starting point to the relevant evidential material.

2 See paragraph C33 of the Re-re-re-Amended Particulars of Claim.

3 See paragraph C34 *ibid*.

4 See paragraph C34 *ibid*.

d) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to dividends and to any other payments made by Sibneft to its owners on the basis of the percentage split referred to above;

e) thereafter any further acquisitions of Sibneft shares would be held on the same basis[5];

v) the alleged 1996 Agreement would be governed by Russian law[6];

vi) in the period from 1996 until 2000 very large sums of money were paid by Sibneft, at Mr. Abramovich's direction, to Mr. Berezovsky and Mr. Patarkatsishvili "in connection with their interests in Sibneft"[7];

vii) subsequently, at meetings between Mr. Abramovich and Mr. Patarkatsishvili between August 2000 and 2001, Mr. Abramovich, through Mr. Patarkatsishvili, threatened Mr. Berezovsky that, unless he and Mr. Patarkatsishvili sold their ownership interests in Sibneft to him or his nominee, Mr. Abramovich would take steps to ensure that (i) Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft would be expropriated by the Russian State and/or (ii) Nikolay Glushkov ("Mr. Glushkov"), a close personal friend and business associate of Mr. Berezovsky and Mr. Patarkatsishvili, would be detained in prison for an extended period[8];

viii) as a result of such intimidatory threats by Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili were coerced into selling their ownership interests in Sibneft to Mr. Abramovich in May or June 2001 for a price of $1.3 billion, which was a very substantial undervalue, when compared with the true value of their interests in Sibneft[9];

ix) Mr. Berezovsky's primary case was that the proper law of the tort was English law; his secondary case was that it was French law; and his third case was that it was Russian law[10];

x) accordingly, Mr. Berezovsky contends that Mr. Abramovich is obliged to compensate Mr. Berezovsky for the loss which he, Mr. Berezovsky, has suffered as a result of such coerced sale[11]. Mr. Berezovsky claims that his loss is in excess of $5 billion.

The RusAl claim

7. Again, although the formulation of the RusAl claim has changed over time, by the start of the trial, the RusAl claim was, in broad summary, pleaded as follows:

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5 See paragraph C37 *ibid*.
6 See paragraph C37A *ibid*.
7 See paragraph C40 *ibid*.
8 See paragraph C40-46 *ibid*.
9 See paragraph C46-54D *ibid*.
10 See paragraph C54A-54D *ibid*.
11 See paragraph C55 et seq. *ibid*.

i) Mr. Berezovsky alleged that from about 1998 or 1999, Messrs Berezovsky, Patarkatsishvili and Abramovich began to acquire assets in the Russian aluminium sector ("the pre-merger aluminium assets"). Until his pleadings were amended at the beginning of the trial, Mr. Berezovsky's claim to an interest in the pre-merger aluminium assets was based on the provision of the alleged 1995 Agreement set out at sub-paragraph 6(ii)(c) above to the effect that Mr. Berezovsky and Mr. Patarkatsishvili would have a combined ownership interest of 50%, and Mr. Abramovich would have an ownership interest of 50%, in *any* future business venture entered into by any of them.

ii) Subsequently, shortly before trial[12], Mr. Berezovsky amended his case to plead that a specific oral agreement had been made between the three men in 1999 (a) to apply the terms of the alleged 1995 Agreement to the pre-merger aluminium assets; and (b) that their contribution to the acquisition of such assets would be paid for from their respective entitlements to their proportionate share of Sibneft's profits. Accordingly, he contended, the Russian law rights of Messrs. Berezovsky and Patarkatsishvili under the alleged 1995 Agreement attached to the aluminium assets[13].

iii) In about late 1999 and early 2000, at Mr. Abramovich's suggestion, Messrs Berezovsky, Patarkatsishvili and Abramovich entered into merger negotiations with Oleg Deripaska ("Mr. Deripaska") for the pooling of their aluminium assets. Messrs Berezovsky's, Patarkatsishvili's and Abramovich's contribution to the merger consisted of their interests in the pre-merger aluminium assets[14].

iv) Messrs Berezovsky, Patarkatsishvili and Abramovich agreed among themselves that any arrangements for the proposed merger would be subject to English law[15].

v) Final agreement between them and Mr. Deripaska was reached at a meeting at the Dorchester Hotel in London on 13 March 2000, ("the Dorchester Hotel meeting") attended by all four men. At this meeting, they agreed orally to pool their assets in a new company and that 50% of the new company would be owned by Mr. Deripaska and his partners (including a Mr. Michael Cherney[16]), and 50% by Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich.

vi) It was also agreed at that meeting that none of the four would sell his shares in the new company without the agreement of the others.

vii) It was orally agreed between Messrs Berezovsky, Patarkatsishvili, and Abramovich at the Dorchester Hotel meeting that, in line with their agreement in relation to the Sibneft shares:

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12 The information had previously appeared in a response dated 26 April 2011 to a request for further information. See also paragraph 260 of Mr. Berezovsky's 4th witness statement.

13 Re-re-re-Amended Particulars of Claim, paragraph 59A and C59B.

14 Re-re-re-Amended Particulars of Claim, paragraph C61.

15 Re-re-re-Amended Particulars of Claim, paragraph C61A.

16 Also referred to as Mikhail Chernoy.

a) their 50% shareholding in the new company should be split and held on terms that Mr. Abramovich would beneficially own 25% of the new company, while Mr. Berezovsky and Mr. Patarkatsishvili would beneficially own 25% between them; and

b) the Berezovsky/Patarkatsishvili shares would be controlled and legally owned by Mr. Abramovich, or companies that he owned or controlled, and held by him for Mr. Berezovsky and Mr. Patarkatsishvili.

viii) During the Dorchester Hotel meeting, Mr. Patarkatsishvili agreed with Messrs Deripaska and Abramovich, in the presence of Mr. Berezovsky, that all the merger arrangements (including those relating solely to Messrs Berezovsky, Patarkatsishvili and Abramovich) would be governed by English law[17].

ix) The arrangements between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili among themselves in respect of RusAl were governed by English law by express choice; alternatively as a matter of implied choice, or as the system of law having the closest connection to the RusAl arrangements[18].

x) RusAl was established as this new company and was registered for this purpose in Moscow on 25 December 2000.

xi) In about September 2003, Mr. Abramovich sold a 25% shareholding in RusAl to Mr. Deripaska, without consulting Mr. Berezovsky or Mr. Patarkatsishvili, or obtaining their consent.

xii) This was a breach of contract and/or trust and/or fiduciary duty on the part of Mr. Abramovich, in that he either:

a) sold his own shares, wrongly favouring his own interests over those of Mr. Berezovsky and Mr. Patarkatsishvili, since the sale gave Mr. Deripaska a controlling shareholding and rendered the remaining 25% minority interest less valuable; or

b) sold the Berezovsky/Patarkatsishvili shares without the consent of the beneficiaries and without accounting to them for the proceeds; or

c) sold a mixture of the two groups of shares.

xiii) Mr. Berezovsky accordingly claims that Mr. Abramovich is liable to compensate him for the loss which he has suffered as a result of Mr. Abramovich's breach of contract and fiduciary duty. Mr. Berezovsky claims that his loss is at least $564 million.

Summary of Mr. Abramovich's defence in relation to the Sibneft claim

8. Mr. Abramovich disputed the Sibneft claim. His case was that, while the precise percentage shareholding fluctuated over time, at all material times, the majority of

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17 Re-re-re-Amended Particulars of Claim, paragraph C62A.

18 Re-re-re-Amended Particulars of Claim, paragraph C64A.

Sibneft's shares were (indirectly) owned by him through trusts and companies which he controlled; that neither Mr. Berezovsky, nor any entity controlled by him, had ever been the registered or beneficial owner of any significant number of Sibneft shares. He asserted that there never had been any agreement to confer any interest in the company, or in its share capital, or in the profits derived from such interest, on Mr. Berezovsky and Mr. Patarkatsishvili; that, on the contrary, the deal between them was that, in return for substantial cash payments to Mr. Berezovsky, Mr. Abramovich and Sibneft would enjoy Mr. Berezovsky's political patronage and influence, which was indispensible to the construction of any major business in the conditions of the 1990s, the Russian term for such support being "*krysha*" (literally translated "roof"). Mr. Abramovich contended that the amount of the various payments made to Mr. Berezovsky for such support was determined by a combination of unilateral demands by Mr. Berezovsky, and *ad hoc* horse-trading between him or Mr. Patarkatsishvili and Mr. Abramovich, but did not represent dividend or other payments linked to an ownership interest in Sibneft. Mr. Abramovich denied that any threats were ever made by him directly or indirectly to Mr. Berezovsky to persuade the latter to part with any alleged ownership interest in Sibneft or otherwise. He alleged that the payment of $1.3 billion made by him in 2001 to Mr. Berezovsky and Mr. Patarkatsishvili had nothing to do with any alleged sale of the latter's alleged ownership interests in Sibneft, but, on the contrary, was a final pay-off to discharge Mr. Abramovich's *krysha* obligations to the two men in relation to Sibneft. He asserted that, in any event, Mr. Berezovsky had suffered no loss: if he had indeed had some sort of ownership interest in Sibneft, he had never parted with it; if, on the other hand (contrary to Mr. Abramovich's contentions), the sum of $1.3 billion in fact represented the price paid by Mr. Abramovich to acquire Mr. Berezovsky's ownership interest in Sibneft, such sum was a great deal more than the value of Mr. Berezovsky's alleged ownership interest at the time. As a matter of law, he contended that, in any event, the alleged agreements concluded in 1995 and/or 1996 in relation to Sibneft were not valid as a matter of Russian law. Moreover, even if (contrary to Mr. Abramovich's contentions) threats had been made to persuade Mr. Berezovsky to sell his alleged ownership interest in Sibneft, any intimidation claim, together with any other claim that might be put forward, was time-barred as a matter of Russian law, which was the relevant law governing the alleged tort of intimidation.

Summary of Mr. Abramovich's defence in relation to the RusAl claim

9. In broad summary, Mr. Abramovich denied Mr. Berezovsky's claim to an interest in the pre-merger aluminium assets based on the allegation that there was an oral binding agreement in 1995 that each of Mr. Abramovich, Mr. Berezovsky or Mr. Patarkatsishvili should be entitled to participate in the same proportions in any future business venture undertaken by either of the others. He further denied that he had ever agreed in 1999, or at any other time, to participate with Mr. Berezovsky and Mr. Patarkatsishvili in the acquisition of the pre-merger aluminium assets on the same terms as the alleged 1995 Agreement. He denied that there had been any agreement made at the Dorchester Hotel meeting (or elsewhere) that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger of the pre-merger aluminium assets with Mr. Deripaska's aluminium assets; or that there had been any agreement that he, Mr. Abramovich, would hold that interest for Mr. Berezovsky and Mr. Patarkatsishvili under an English law trust. He

further denied that it had been agreed at the Dorchester Hotel meeting between Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska that none of them should be entitled to sell his interest in the merged business without the consent of the others; or that his sale of a 25% share in RusAl in September 2003 to Mr. Deripaska's holding companies was a breach of such agreement. Further he contended that the governing law of any such arrangement would have been Russian law, under which no concept of trust or equitable proprietary interest was recognised and that, in any event, any arguable claim under Russian law would have been time barred under the relevant Russian law of limitation. He alleged that, in any event, any trust claim would have been bad even under English law, because of the uncertainty of its alleged terms. Finally, he claimed that the RusAl claim had in any event been the subject of a contractual release, which was binding on Mr. Berezovsky. Accordingly, Mr. Abramovich asserted that he had no liability to Mr. Berezovsky in respect of the RusAl claim.

Connection between the two claims

10. The Sibneft and RusAl claims are distinct claims. However it was common ground they were inter-connected because, in two significant respects, the RusAl claim depended on Mr. Berezovsky proving that he had an interest in Sibneft. That was because:

    i) Mr. Berezovsky's claim to an interest in the merged aluminium business, RusAl, depended on his establishing that, at the time of the merger agreement with Mr. Deripaska, he already had an interest in the pre-merger aluminium assets acquired by Mr. Abramovich's companies under certain agreements dated 10 February 2000. Mr. Berezovsky's claim to an interest in the pre-merger aluminium assets, in turn, depended on:

        a) the allegation that there was indeed an oral binding agreement in 1995 that each of Mr. Abramovich, Mr. Berezovsky or Mr. Patarkatsishvili should be entitled to participate in the same proportions in any future business venture undertaken by either of the others; and/or

        b) the allegation (made by a further re-amendment at the beginning of the trial) that the alleged 1995 Agreement was applied specifically to the aluminium venture by the terms of the alleged 1999 Agreement.

    ii) It was common ground that Mr. Berezovsky made no cash contribution to the cost of acquiring the pre-merger aluminium assets. Mr. Abramovich contended that Mr. Berezovsky's claim to an interest in any of the pre-merger aluminium assets could not be established unless (as the latter contended) it was part of the alleged 1999 Agreement that his contribution should be set off against his share of Sibneft profits. This, in turn, depended on Mr. Berezovsky satisfying the court that he was entitled to a share of Sibneft profits.

11. The two claims were also related in a much more general way. That was because it was necessary to look at the business relationship between Mr. Abramovich, on the one hand, and Mr. Berezovsky and Mr. Patarkatsishvili on the other, as one continuum. Thus the evidence relating to the manner in which the three men subsequently conducted themselves in relation to the RusAl merger, although later in

time than the alleged 1995 and 1996 Agreements, was itself relevant to an assessment of whether the original relationship between Mr. Abramovich and Mr. Berezovsky was the contractual relationship alleged by Mr. Berezovsky or the *krysha* relationship alleged by Mr. Abramovich. For this reason, in coming to my conclusions in relation to the Sibneft issues, I have taken into account the subsequent evidence in relation to the RusAl issues, and vice versa.

Procedural chronology of the Commercial court action

12. Before setting out the chronology relating to the Commercial court action, it is relevant to refer to certain other events which occurred before the issue of proceedings. In addition to the sale to Mr. Deripaska of a 25% shareholding interest in RusAl in September 2003, in July 2004 Mr. Abramovich sold the remaining 25% stake in RusAl to Mr. Deripaska. In September 2005, Mr. Abramovich sold the stake in Sibneft which he then held (through companies controlled by him), said to represent about 72% of the share capital in Sibneft, to OAO Gazprom ("Gazprom"), a Russian public joint stock company, via another company called Gazprom Finance BV.

13. In July 2006, Mr. Glushkov fled Russia for London.

14. On 14 May 2007, Mr. Berezovsky's then solicitors, Carter Ruck, sent a letter before action to Mr. Abramovich, enclosing draft particulars of claim. On 1 June 2007, the Claim Form was issued. On 8 January 2008, re-drafted particulars of claim were served by Mr. Berezovsky.

15. On 12 February 2008 Mr. Patarkatsishvili died in England.

16. On 18 and 28 April 2008, there was a two day hearing before HHJ Mackie QC, sitting as a Deputy High court Judge, at which Mr. Berezovsky sought permission to make certain amendments, and at which Mr. Abramovich sought Further Information of Mr. Berezovsky's case.

17. Further Information was served by Mr. Berezovsky in correspondence on 25 April 2008, 2 May 2008, and 16 May 2008, and served in consolidated form on 12 June 2008. On 26 June 2008 Mr. Abramovich served his defence. On 2 October 2008 Mr. Berezovsky served his reply.

18. On 14 November 2008, Mr. Abramovich issued an application notice pursuant to CPR Part 24 for summary judgment in respect of all of Mr. Berezovsky's claims; and, pursuant to CPR Part 3.4, to strike out all of his claims. In the alternative, Mr. Abramovich sought summary judgment in respect of, or to strike out, parts of the claim. (I shall refer to these applications collectively as "the summary judgment application".) The summary judgment application came on for hearing before Sir Anthony Colman, sitting as a Deputy Judge, in July and November 2009. Sir Anthony Colman handed down judgment on 31 March 2010; [2010] EWHC 647 (Comm). He dismissed both the application for summary judgment and that to strike out. He gave permission to Mr. Berezovsky to amend his pleadings.

19. The Court of Appeal heard Mr. Abramovich's appeal in January 2011, handing down its judgment on 23 February 2011 [2011] EWCA Civ. 153. It dismissed Mr. Abramovich's appeal against Sir Anthony Colman's decision.

Section II - The issues which the court has to determine in the Commercial court action

The Agreed List of Issues

20. The parties agreed a list of issues to be determined in the Commercial court action ("the Agreed List of Issues"). They are attached to this judgment as Appendix 1.

Liability issues only to be determined

21. It was sensibly agreed between the parties that, because of the unavoidable unavailability of one of the quantum experts, during the relevant trial period set aside for their evidence, issues relating to the quantum of Mr. Berezovsky's claim in the Commercial court action should be adjourned pending my determination of the liability issues.

The liability issues

22. In summary, the liability issues which the court has to determine in the Commercial court action can be formulated as follows[19]:

A. Sibneft

i) **Issue A1**: Were agreements made, in 1995 and in 1996 between Mr. Abramovich on the one hand, and Mr. Berezovsky and Mr. Patarkatsishvili on the other, that they would have an interest in the proportions 50:50 in any shares that they might acquire in any oil company carrying on the business formerly carried on by OAO Omskiy Oil Refinery and OAO Noyabrskneftegaz, and additionally, in the terms alleged by Mr. Berezovsky in his pleadings and in his written and oral evidence?

ii) **Issue A2**: If such agreements were made, were they valid as a matter of Russian law, which, it is common ground, must have governed them?

iii) **Issue A3**: If so, did Mr. Abramovich threaten Mr. Berezovsky that, unless Mr. Berezovsky sold that interest to him or his nominee, Mr. Abramovich would take steps to ensure that (i) Mr. Berezovsky's interest in Sibneft would be expropriated by the Russian State; and/or (ii) Mr. Glushkov would be detained in prison for an extended period?

iv) **Issue A4**: If Mr. Berezovsky had an interest in Sibneft, did he sell it to Devonia Investments Limited under a sale and purchase agreement ("the Devonia Agreement") dated 11/12 June 2001 between Mr. Berezovsky and

[19] I have adapted this summary list of liability issues from Mr. Abramovich's written closing submissions for the purposes of this judgment, rather than using the Agreed List of Issues, as the former are shorter and more comprehensible. The order differs slightly from the order adopted in the Agreed List of Issues.

Mr. Patarkatsishvili, Devonia Investments Limited ("Devonia") and Sheikh Sultan[20] ("the Sheikh")."

v) **Issue A5**: What law governs any liability in tort or delict arising out of the alleged intimidation?

vi) **Issue A6**: Has such liability arisen under that law?

vii) **Issue A7**: If so, is a claim in respect of that liability time-barred?

B. RusAl

viii) **Issue B1**: Was an agreement made between Mr. Abramovich and Mr. Berezovsky: (i) in 1995; or (ii) in late 1999, the effect of which was that Mr. Berezovsky would have an interest in any aluminium producers which might be acquired by Mr. Abramovich or his companies (in the event the Bratsk and KrAZ assets)?

ix) **Issue B2**: Was it agreed at the Dorchester Hotel on 13 March 2000 that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger with Mr. Deripaska's aluminium interests?

x) **Issue B3**: Was it expressly agreed at the Dorchester Hotel on 30 March, 2000 that Mr. Abramovich would hold their interest in the aluminium business created by the merger of those assets with Mr. Deripaska's aluminium interests on trust for Mr. Berezovsky and Mr. Patarkatsishvili under an English law trust?

xi) **Issue B4**: If it was agreed that Mr. Berezovsky would have an interest in the merged business, but there was no express agreement about the law governing the arrangements between him, Mr. Abramovich and Mr. Patarkatsishvili relating to that business, then what law did govern those arrangements?

xii) **Issue B5**: Would the alleged express RusAl trust be good even in English law?

xiii) **Issue B6**: If there was no valid express trust, was there a resulting or constructive trust governed by English law?

xiv) **Issue B7**: Was it agreed at the Dorchester Hotel between Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska that none of them should be entitled to sell his interest in the merged business without the consent of the others?

xv) **Issue B8**: If such an agreement was made, what was its proper law?

xvi) **Issue B9**: Was the sale of the first 25% tranche of RusAl in September 2003 a breach of (i) trust or (ii) contract?

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[20] Crown Prince of Abu Dhabi, Sheikh Sultan Bin Khalifa Al Nahyan.

xvii) **Issue B10**: Was any liability released under the terms of the agreements for the sale of the second 25% tranche of RusAl shares on 20 July 2004?

Section III - The Chancery actions

The claims made in the Chancery actions

23. In addition to his claim in the Commercial court proceedings against Mr. Abramovich, in late 2008 and early 2009 Mr. Berezovsky also issued three actions in the Chancery Division ("the Chancery actions"). In these actions, Mr. Berezovsky contends that he was Mr. Patarkatsishvili's partner in relation to a number of substantial business ventures, and seeks to obtain what Mr. Berezovsky alleges is his (i.e. Mr. Berezovsky's) share of these ventures, including an interest in RusAl.

24. The first of these Chancery actions was Claim No. HC08C03549 ("the main Chancery action"), which was issued on the 12 December 2008. The defendants to this action are:

i) the personal representatives of the estate of Mr. Patarkatsishvili ("the Interim Administrators");

ii) Inna Gudavadze, Liana Zhmotova, Iya Patarkatsishvili and Natela Patarkatsishvili, who are respectively the widow, two daughters and mother of Mr. Patarkatsishvili ("the Family defendants");

iii) other possible beneficiaries of Mr. Patarkatsishvili's estate; and

iv) various individuals and entities who Mr. Berezovsky says hold assets in which he asserts an interest.

25. At the centre of the main Chancery action is Mr. Berezovsky's claim that he and Mr. Patarkatsishvili made an oral agreement in Russia in 1995 that all commercial investments made by either of them would be shared on a 50:50 basis. Before me, this allegation has been referred to as "the bilateral joint venture" or the "over-arching joint venture". As an alternative to this allegation, in the main Chancery action Mr. Berezovsky asserts a number of individual agreements pursuant to which he says he acquired an interest in various assets. One such agreement is alleged to have been made at the Dorchester Hotel meeting where, as set out above, Mr. Berezovsky claims that he and Mr. Patarkatsishvili obtained a 25% interest in RusAl. Mr. Berezovsky says that he is entitled to trace into the assets acquired with the proceeds of sale of that interest, and to the extent he is unable to recover them, seeks damages in the main Chancery action against Mr. Patarkatsishvili's estate for failing properly to secure them.

26. The second of the Chancery actions to be issued by Mr. Berezovsky was Claim No. HC09C00494 ("the Metalloinvest action"), which was issued on 18 February 2009. The defendants to that action are the Interim Administrators, the Family defendants, and Vasily Anisimov ("Mr. Anisimov"), a Russian businessman, together with a number of entities controlled by him ("the Anisimov defendants"). In that action Mr. Berezovsky claims an interest in a stake held by Mr. Anisimov in CJSC Holding

Company Metalloinvest ("Metalloinvest"), a valuable Russian ore and mining company. It is alleged that the Metalloinvest stake was purchased using monies from the sale of the second 25% interest in RusAl in July 2004. Mr. Berezovsky claims to have acquired an interest in those monies - and, thus, in the Metalloinvest stake purchased with them - as a result of the alleged agreement concluded at the Dorchester Hotel meeting.

27. The third of the Chancery actions issued by Mr. Berezovsky was Claim No. HC09C00711 ("the Salford action"). The 4th to 9th and 11th defendants in that action ("the Salford defendants") were, or were alleged to be, members or associates of a group of companies including Salford Capital Partners Inc, a private equity firm specialising in the developing markets of the former Soviet Union and Eastern Europe, alleged to have been involved in the sale of the second tranche of RusAl shares. The Interim Administrators and Ms. Gudavadze are also defendants in the Salford action. The Salford defendants contend that the proceeds of the sale of the second tranche of RusAl shares, and the alleged abortive instruction of the Salford defendants in connection therewith, form no part of the Salford action; and that the claims against the Salford defendants in the Salford action rest upon quite different foundations: namely the alleged bilateral Joint Venture between Mr. Berezovsky and Mr. Patarkatsishvili, and the arrangements which are said to have been made between Mr. Berezovsky and Mr. Patarkatsishvili on the one hand, and the Salford defendants on the other, in May 2002. The Salford defendants say that the question of Mr. Berezovsky's ownership of RusAl and the fruits of that investment form no more than part of the narrative background to the case that is made against them.

28. I was informed that the Family defendants are the principal beneficiaries of Mr. Patarkatsishvili's estate and that, with the approval of the Interim Administrators, and other beneficiaries, the Family defendants have made the running in defending Mr. Berezovsky's claims against the estate in the Chancery actions.

The Overlap Issues

29. The Family defendants, Mr. Anisimov and the Salford defendants are participating in this Joint Trial pursuant to an order of Mann J and myself dated 16 August 2010 ("the 16 August order"), made at a conjoined Case Management Conference held in both the Commercial court action and in the Chancery actions, which took place in July and August 2010. The 16 August order identified a number of issues, defined as "the Overlap Issues", which arise in both the Commercial court action and the Chancery actions. Mann J and I directed that the Overlap Issues should be tried and determined as preliminary issues in the Chancery actions at the same time as the trial of the Commercial court action. We further ordered that each of the parties to the Chancery actions should be bound only by the findings made at the Joint Trial on, and might participate fully in, the Overlap Issues, but should not be bound by findings at the Joint Trial on any other issues. The Overlap Issues, as defined in the Order of 16 August 2010, were slightly amended by orders made respectively on 7 July and 23 January 2012. As finally defined, they were as follows:

> "(1) Did the Claimant [Mr. Berezovsky] acquire any interest in any Russian aluminium industry assets prior to the alleged meeting at the Dorchester Hotel in March 2000 (other than as a result of the joint venture

agreement alleged by the Claimant in the Main Chancery Action) and if so, what was the nature and is extent of such interest and how did it arise?

(2) Was there a meeting at the Dorchester Hotel in 2000 at which the Claimant, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska agreed to pool their assets in the Russian aluminium industry as the Claimant alleges (the "Dorchester Hotel Agreement")?

(3) If so:

(a) Did Mr. Abramovich agree to hold half his 50% interest on trust for the Claimant and Mr. Patarkatsishvili?

(b) Was any such agreement governed by English law or Russian law (or another system of law)?

(c) Did any such agreement give rise to any interest in RusAl under an English law express trust in favour of the Claimant (other than as a result of the joint venture agreement alleged by the Claimant in the Main Chancery Action)?

(4) In the alternative to 3(c), did the Claimant acquire any interest in RusAl under an English law resulting or constructive trust (other than as a result of the joint venture agreement alleged by the Claimant in the Main Chancery Action)?

[For the purpose of these Overlap issues an 'interest in RusAl' is to be understood as referring to a beneficial interest in trust property of the description set out at paragraph C64(4) of the Re-re-re-Amended Particulars of Claim in 2007 Folio 942.]

(5) Was the $585 million received by Cliren following the sale of the Second Tranche of RusAl shares (as defined at paragraph 29 of the Abramovich List of Issues):

(a) (i) $450 million of sale proceeds and

(ii) $135 million of outstanding dividend payments from RusAl?; and/or

(b) A payment made by Mr. Abramovich to Mr. Patarkatsishvili at the request of Mr. Patarkatsishvili in return for him providing assistance and protection to Mr. Abramovich in

relation to Mr. Abramovich's acquisition of assets in the Russian aluminium industry?"

30. As can be seen, the Overlap Issues correspond with certain of the RusAl liability issues in the Commercial court action. Paragraph 5 of the 16 August order also referred to certain other issues, which arise in the Commercial court action only, upon which the Chancery defendants could participate and be bound. The Overlap Issues are thus of relevance to two of the three Chancery actions, and of tangential relevance to the third.

31. The Family defendants and Mr. Anisimov have a very significant interest in the outcome of this trial and the determination of the Overlap Issues. In the Metalloinvest action, whilst recognizing Mr. Patarkatsishvili's interest in the RusAl proceeds, Mr. Anisimov denies that Mr. Berezovsky had any interest in RusAl or its proceeds or in the Metalloinvest stake held by Mr. Anisimov. Were Mr. Berezovsky to establish an interest in half of the RusAl proceeds by means of the alleged agreement made at the Dorchester Hotel, that would, according to the Family defendants, halve Mr. Patarkatsishvili's interest in the RusAl proceeds, and therefore that of his estate (of which the Family defendants are principal beneficiaries). In the main Chancery action, in reliance on his claimed interest in the RusAl proceeds, said to arise, inter alia, as a result of the alleged agreement at the Dorchester Hotel, Mr. Berezovsky asserts a claim to a number of valuable assets – in addition to Metalloinvest - which are prima facie held for Mr. Patarkatsishvili's estate. In addition, Mr. Berezovsky says that the estate is liable to him in damages to the extent that he is unable to secure and recover any such assets. Again, the determination of whether or not Mr. Berezovsky had such an interest in RusAl (and therefore in its proceeds) is of importance to the estate in that action and, thus, to the Family defendants.

32. Accordingly, as well as sitting as a judge of the Commercial court to determine the Commercial court action, I also, pursuant to a direction of the Chancellor, Sir Andrew Morritt dated 21 June 2011, sat as a judge of the Chancery Division for the purpose of determining the Overlap Issues as preliminary issues in the Chancery actions.

Section IV - Representation

33. At trial, Mr. Berezovsky was represented by Mr. Laurence Rabinowitz QC, Mr. Richard Gillis QC, Mr. Roger Masefield, Mr. Simon Colton, Mr. Henry Forbes-Smith, Mr. Sebastian Isaac, Mr. Alexander Milner and Ms. Nehali Shah. Mr. Abramovich was represented by Mr. Jonathan Sumption QC, Miss Helen Davies QC, Mr. Daniel Jowell QC, Mr. Andrew Henshaw, Mr. Richard Eschwege, Mr. Edward Harrison and Mr. Craig Morrision. In the Chancery actions, the Anisimov defendants were represented by Mr. Ali Malek QC, Ms. Sonia Tolaney QC and Ms. Anne Jeavons. Mr. David Mumford Esq appeared for the Salford defendants to the Chancery actions, and Mr. Jonathan Adkin and Mr. Watson Pringle appeared for the Family defendants to the Chancery actions.

Section V - Documentation and case materials

34. For a case which at its centre required the proof of oral contracts and intimidation, the universe of documentation and case materials was huge. There were 20 different sets of bundles, designated from A to T, with each set in itself often comprising further

subsets of bundles, and numerous numbered individual files. For example: there were 9 subsets of what were euphemistically referred to as "Selected Disclosure" bundles, of which the principal subset of chronological documents itself ran to what in hard copy was 99 lever arch files; there were 13 files of witness statements, 36 files of expert evidence addressing Russian history and Russian law, and 57 files of expert valuation reports which, in the event, the court did not need to address. Most importantly, for the trial alone, there were approximately 4000 pages of written submissions submitted by counsel.

35. The court and the parties had the inestimable advantage of having all the documentation and case materials, including daily transcripts, legal arguments and authorities presented in a highly organised web-based electronic format. This meant that it was extremely quick and easy to access all the necessary materials both in and out of court, including notes which I myself had made during the hearing. There was extensive hyper-linking, which rendered access even easier. In effect, I was able to work in a virtually paperless environment although counsel and witnesses often preferred to use hard copy materials for the purpose of cross-examination.

36. I return to this topic at the end of this judgment, but there was no doubt that electronic presentation of documentation was not only essential, given the amount of material involved, but also that it also greatly contributed to the efficient conclusion of the trial within the time allotted. Whether the facility of electronic compilation and presentation unnecessarily increases the number of documents presented to the court at trial, and whether this in itself can give rise to a potential increase in costs, is a matter for debate on another occasion.

37. I should perhaps also mention that, because, for various reasons, the trial had to start on 3 October 2011, it was not possible for any formal time to be allocated in the court schedule for judicial pre-reading in advance of the trial itself. Necessarily, therefore, a certain amount of pre-reading had to be done in my own time, and a considerable amount of time was required both during, and after the conclusion of the trial, to complete the reading process.

Section VI - Factual background

The Russian context

38. Both Mr. Berezovsky and Mr. Abramovich described the claim as one arising out of a "uniquely Russian story". Indeed, Mr. Berezovsky sought to rely, in support of his case, on a lengthy and detailed report by Professor Stephen Fortescue about contemporary Russian history, together with a large number of press articles and similar materials upon which the report was based. The claim could also be characterised as a uniquely personal story, centred as it was on a relationship between two men, of different ages, both in their time extremely successful and powerful, and whose fortunes changed as the dynamic of their relationship changed. The dispute between the two men has to be evaluated against the sometimes turbulent political and economic backcloth of Russia in the late 1990s and early 2000s, and in the context of the deterioration of their relationship. Nonetheless, the dispute is in essence a commercial one, which, like any other tried in this court, has to be decided on the factual evidence, both oral and documentary, relating to the specific transactions in issue. And, although this court necessarily views that evidence "Under Western

Eyes[21]", it has to be careful about applying what it might regard as conventional Western European business standards to judge the conduct of businessmen operating in the very different, and largely unregulated, commercial and political environment of Russia at the material times. As I remind myself: "… this is not a story of the West of Europe"[22].

39. The reason why the Russian historical context was relevant was that it was the background against which the inherent probabilities of Mr. Berezovsky's and Mr. Abramovich's respective cases fell to be evaluated. What is inherently probable in a secure and relatively ordered society, governed by the rule of law, is not necessarily inherently probable in the extraordinary conditions that prevailed in Russia in the 1990s.

40. Interesting as it was, however, I obtained limited assistance from the evidence about Russian contemporary history in determining the inherent probabilities of Mr. Berezovsky's claims or Mr. Abramovich's defence. Much of the so-called historic material relied upon was no more than hearsay reportage, some of it of an obviously unreliable or self-serving character. Nor was it necessary, save in certain limited areas, for me to make any factual findings about what might be characterised as political events. Accordingly, I have mainly restricted any references below to those events whose nature and occurrence was effectively, or to a large extent, agreed between the parties and their respective experts. Where the experts' reports were of particular assistance was in relation to the concept of *krysha* which I explain below.

41. The following is a largely non-contentious summary of the relevant factual background to Mr. Berezovsky's claims taken from the opening submissions on both sides and the expert evidence. In so far as such summary departs from agreed facts, it reflects my findings of fact based on the evidence at trial.

Relevant events in Russia from late 1980s to May 2000

42. The late 1980s and 1990s were a period of extraordinary upheaval in Russian history. During this period a political system, an economic model and a legal framework for trade and industry were scrapped and replaced. After the final collapse of Communism in 1992, Russia became Europe's "Wild East". A country, which had never in its entire history been either liberal or democratic in its governmental institutions, experienced, in less than a decade, a transition to capitalism which had taken other European countries more than a century to achieve. The result of this was an immense social upheaval, the partial collapse of old structures of authority, the enfeeblement and the impoverishment of the state, and the disappearance of the rule of law.

43. Between 1987 and 1991, under the policies of *glasnost* ("openness") and *perestroika* ("restructuring"), the government of the USSR under Mikhail Gorbachev began to dismantle the Soviet centrally planned economy. Between 1987 and 1991, new

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21 See *per* Joseph Conrad, *Under Western Eyes* (1911), Part Fourth, Chapter V: "And this story, too, I received without comment in my character of a mute witness of things Russian, unrolling their Eastern logic under my Western eyes".

22 See *ibid*: Part First, Chapter II: "If to the Western reader [these thoughts] appear shocking, inappropriate, or even improper, it must be remembered that as to the first this may be the effect of my crude statement. For the rest, I will remark that this is not a story of the West of Europe."

legislation in the USSR relaxed certain conditions relating to: the engagement and holding of non-personal private property; the entitlement of individuals to engage in private economic activity; the establishment of enterprises for profit; and the entry into market transactions by individuals.

44. By 1991, a large number of Soviet enterprises had effectively been unilaterally privatised by their Soviet era managers, who ceased to report to the central planning authorities and operated their factories and plants for their own profit. These managers subsequently became known as "Red directors". At the same time, a small group of proto-capitalists from outside the Soviet management structures were starting to develop businesses which would make them very rich.

45. On 12 June 1991, Boris Yeltsin was elected as President of the Russian Soviet Federative Socialist Republic. The coup attempt by Soviet hardliners in August 1991 accelerated the delegitimisation of the Communist Party and the Soviet government, and, in December 1991, the Soviet Union was dissolved. The Union Republics of the former USSR, including Russia, became independent and President Yeltsin (until then only the President of a subsidiary Republic within the USSR) became President of a newly independent Russia, a position he held until 31 December 1999.

46. It was common ground between the historical experts that, during the transition from a socialist to a market economy, the Russian business and legal environments were turbulent. For example, Professor Fortescue described the transition as follows:

> "During the transition from a socialist economy to a market economy, Russia struggled to pass and implement comprehensive and consistent legislation governing business activities. There were gaps in the law, sometimes filled in a stop-gap way by Soviet-era law; there were widespread problems with poor drafting, caused by inexperience and incompetence; and the legislative and administrative process was bedevilled by bitter political fights and intense lobbying that produced unpredictable and inconsistent outcomes. This meant that there was widespread lack of knowledge and certainty about the proper methods of behaviour and documentation."

47. Professor Robert Service, Mr. Abramovich's historical expert, described the situation as follows:

> "Businessmen operated in the same environment. They could see that due legal process and constitutional rights counted for little in the brutal economic transformation that was occurring in Russia. Courts were notoriously venal and subject to political manipulation. Policemen were often corrupt. The official legislation on ownership, enterprise registration, arbitration and trading was slow in being formulated and refined."

48. Professor Bruce Winfield Bean, the Family defendants' historical expert, expressed the point in similar terms:

> "… there were inconsistent laws, incomplete laws, missing laws, and (in the very early 1990s) regulations sometimes available only to bureaucrats, all of which led to uncertainty …
>
> …
>
> … the uncertain Russian legal environment, overly aggressive tax inspectors, outmoded tax regimes based upon turnover, unhelpful obstructionist governmental agencies and bureaucrats, potentially unreliable courts which could be exploited by aggressive competitors, and political uncertainty …."

49. These types of problems were confirmed by Sibneft itself in an offering circular issued by Salomon Brothers in 1997, which said:

> "Russian law is made up of federal legislation, presidential decrees, government decrees and ministerial regulations that at times are complemented by regional and local rules and regulations. These bodies of law can overlap and sometimes conflict with one another, with uncertain results. Furthermore, the application of Russian laws by Russian governmental authorities is often subject to a high degree of discretion, which can result in inconsistent stances being taken by different authorities or even within the same authority by different officials.
>
> The Russian judicial system is generally untested and may not be fully independent from outside social, economic or political forces. The course of litigation in Russian courts can be slow, and court decisions can be difficult to predict, in part because of limited judicial precedent and experience in free-market commercial matters. Accordingly, an investor may find seeking redress by pursuing an action in Russian courts difficult or impossible."

50. It was in this context that, during the late 1980s and early 1990s, a small group of individuals were able to take the opportunities and manage the risks of the transition economy in a way which allowed them to achieve huge wealth and influence in a very short time. They were commonly, if (arguably) inaccurately, referred to as "oligarchs"[23].

Krysha

51. The concept of *krysha* (literally Russian for "roof") played an important role in this case. The meaning of the concept was effectively common ground as between the respective historical experts and the parties. In a society which is not governed by the rule of law, people devise alternative structures to govern their relations, based not on

[23] There was some discussions between the historical experts as to whether the use of such term was appropriate, and what it conveyed, but that is not a matter which I need address.

law but on power. *Krysha* is an alternative system of obligation; the classic product of a society where businessmen cannot count on the protection of the law, either because the law is itself defective or because the administrative and judicial agencies charged with its enforcement cannot be relied upon to do so. Where there is no effective law, or no effective legal process of enforcement, relationships are governed instead by power. It was common ground among the experts that the situation in Russia in the 1990s and early 2000s was that, although there were laws, the legal processes were defective.

52. The concept of *krysha* was described by Mr. Berezovsky's historical expert, Professor Fortescue, in paragraphs 188 to 190 of his first report. He emphasised that the concept was not limited to physical protection. He explained as follows:

> "188. The term first came into use in everyday usage in Russia in the early to mid-1990s when the world was taken over by racketeers and took on criminal overtones. In that context, it meant 'protection'. Protection racketeering was a very large part of the activities of criminal gangs in the 1990s although with all the violent and involuntary connotations of the word protection, a criminal *krysha* was likely to also provide services beyond the immediate one of keeping other criminal groups away from your business. These included debt collection, i.e. contract enforcement, and conflict resolution. In the absence of an effective state, the *krysha* fulfilled some of the functions of the state, and collected tax for doing so.
>
> 189. As I noted above, in the late 1990s the Russian state began to assert itself and to operate more effectively. This not only reduced the role of criminal groups but also led to a new application of the word *krysha* (which was not in general usage in the early and mid-1990s). It was now bureaucrats and politicians who provided a *krysha*. Like the criminal gangs, they also provided protection from a business person's enemies and competitors. They also advanced the interests of their business client within the bureaucracy and political arena and were well remunerated for doing so. Volkov says of this more recent usage of the word *krysha* that:
>
> > 'In current Russian business parlance [it] is used to refer to agencies that provide institutional services to economic agents irrespective of the legal status of providers and clients. Such agencies are not necessarily criminal groups but are composed of a variety of criminal, semi legal (informal), legal, and state organisations.'

> 190. Used in this way, the term *krysha* does not carry the necessary implication that the services in question will be criminal or illegal."

53. In November 2003, an article in *The Economist* observed that:

> "… most [Russian businessmen] already know that their best protection is still not the law but their *krysha,* or "roof" – a well-connected power broker".

54. The evidence at trial demonstrated that the essential features of *krysha* were as follows:

i) It was not possible in Russia in the 1990s to build up a substantial business without both political and physical *krysha*[24]. "Anyone with the ambition to flourish in Russian big business …" opined Professor Service, "… had to hire an apparatus of political and physical protection"[25]. If one did not have political power oneself, then one needed access to a "Godfather" who did. Mr. Berezovsky himself explained that he had turned to politics in 1994 after finding that the showrooms of his motor dealership were being attacked by gangs employed by business rivals and he was the target of an attempted assassination.

ii) *Krysha* was a form of clientage, which came at a price: see Professor Fortescue's account of *krysha* in the mid-1990s quoted above. Professor Bean stated that (in his experience) "… *krysha* was never provided without a cost".

iii) Political *krysha* (the kind with which the article in *The Economist* was concerned) involved the patron's use of his connections in government or administration:

a) to procure favourable treatment of the client's interests in the formulation of legislation or policy, or the provision of discretionary favours;

b) to protect the client against arbitrary action by State authorities; and to provide the client with a visible connection to a powerful man which can be expected to deter others from attacking his interests[26].

iv) Physical *krysha* involved protection against violence or other interference, commonly through the services of criminal gangs[27]. Professor Bean (agreeing with Professor Fortescue's analysis) states that:

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24 Abramovich 3rd witness statement, paragraphs 33 and 50. Abramovich Day 24, page 23: "It was impossible to keep hold of the company without *krysha*. So we required both political and physical *krysha* protection".

25 Service 1, paragraph 39.

26 Abramovich 3rd witness statement, paragraphs 33, 37 and 43; Abramovich Day 17, page 64; Day 24; Day 24, pages 38-39. See also Fortescue 1, paragraph 189.

27 Abramovich Day 17, page 69. This is the type of *krysha* being described by Professor Fortescue at paragraph 188 of his first report. In his oral evidence, he confirmed his view that in the mid-90s businessmen were prepared "… to turn to criminal protection or resolution in the event of disputes over

> "… if an organisation or individual was known to be associated with a powerful provider of physical 'protection', there were great advantages in terms of protection from harassment by criminal elements"[28].

v) *Krysha* was a long-term relationship, based on a code of personal obligation. It was not terminable at will. The client owed the survival, and possibly the creation, of his business to the patron, who may well regard himself as "owning" the client or as having an interest in the client's business fortunes[29]. Whilst Mr. Berezovsky did not accept this aspect of *krysha*, and it did not feature in the experts' reports, I accept Mr. Abramovich's evidence in this respect. It appeared to me to be logically consistent with the notion of a protection-type relationship.

vi) *Krysha* was not a legally enforceable relationship[30]. By definition it normally involved either the provision of political influence or protection for money or money's worth, or criminal violence, or both. Again I accept Mr. Abramovich's evidence in this respect.

55. It was Mr. Abramovich's case that the relationship between Mr. Berezovsky and himself was founded principally on political *krysha* or protection: not merely at the outset in 1995, but also thereafter. He claimed that the relationship with Mr. Berezovsky included the provision of an element of physical, as well as political, protection; but that it was not Mr. Berezovsky who provided physical protection, but rather his associate, Mr. Patarkatsishvili. Mr. Abramovich's evidence was that he was concerned to maintain his connection with a known and influential political protector right through to the time when Mr. Berezovsky fell out with Mr. Putin in 2000, and that, even then, he did not regard the relationship as unilaterally terminable. It was also his evidence that the physical protection provided by Mr. Patarkatsishvili was also valuable and, in relation to the RusAl acquisition, essential.

56. It was also Mr. Abramovich's case that the lobbying activities of Mr. Berezovsky, as a protector providing political *krysha* for Mr. Abramovich, were inherently corrupt; and that, likewise, the deal between the two men, whereby Mr. Abramovich agreed to pay Mr. Berezovsky for his *krysha* services, was also corrupt. Mr. Sumption accepted that Mr. Abramovich was privy to that corruption but submitted that the reality was that that was how business was done in Russia in those times. Mr. Berezovsky certainly accepted the business reality of the need for influence; he said repeatedly in his witness statements that, without his political influence over President Yeltsin, Mr. Abramovich would have got nowhere in the world of Russian business and would certainly not have acquired control of Sibneft. That was accepted by Mr. Abramovich, and indeed was part of his case.

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their business arrangements": Fortescue Day 37, page 112. Mr. Abramovich confirmed that it was his desire to secure himself against the use of such steps by others that led to his need for physical *krysha*: Abramovich Day 17, page 69.

28 Bean, paragraph 42.

29 Abramovich 3rd witness statement, paragraphs 35 and 127.

30 Abramovich 3rd witness statement, paragraphs 36 and 278; Abramovich 4th witness statement, paragraph 35; Shvidler 3rd witness statement, paragraph 130; Shvidler 5th witness statement, paragraph 22.

57. I address below my findings in relation to the evidence and arguments relating to Mr. Abramovich's *krysha* allegations.

Mr. Berezovsky's personal and business history up to 1994 - the relevant corporate entities and associates involved

Mr. Berezovsky's personal background

58. Mr. Berezovsky was a significant and highly controversial figure in Russian business and politics during the 1990s. Born in 1946, he was for many years an academic mathematician, having obtained a degree in applied mathematics. He remains a correspondent member of the Russian Academy of Sciences, with over 100 scientific publications to his name. As Head of the Department of System Design at the Institute of Control Sciences (a research centre associated with the motor industry), he had begun to work in 1973 with the largest car manufacturer in Russia, the State-owned AvtoVAZ.

LogoVAZ

59. In 1989, Mr. Berezovsky was involved in the creation of ZAO LogoVAZ ("LogoVAZ"), Russia's largest independently owned car dealership. This was initially set up as a Russian joint venture between AvtoVAZ, LogoVAZ's main supplier, Logosystems, an Italian company, and the Institute of Control Sciences. Later, it was restructured into a Russian closed joint stock company. Mr. Berezovsky never had more than a small direct shareholding in LogoVAZ; it amounted to 6.78% in 1996. But he exercised effective management control over LogoVAZ until about 1995, and made his initial wealth out of the business in this period. He was the General Director at LogoVAZ (equivalent to Chief Executive Officer).

60. Amongst the individuals who participated in the establishment and operation of LogoVAZ together with Mr. Berezovsky, and who play a part in this case, were Mr. Glushkov, who, as I have already mentioned, was one of Mr. Berezovsky's closest friends and business associates, and Vladimir Kadannikov ("Mr. Kadannikov"), a former General Director of AvtoVAZ and Deputy Prime Minister of Russia from 1996. Mr. Glushkov had a doctorate in theoretical and mathematical physics and had also studied economics at the All Russian Academy of Foreign Trade. By the time Mr. Berezovsky had met him in 1989, Mr. Glushkov had spent approximately ten years working for the Ministry of Foreign Trade, had acted as a consultant to the Chamber of Commerce and had experience of establishing joint ventures in Russia. He became head of LogoVAZ's commercial department, and shortly thereafter became Deputy General Director for Commerce.

61. At first, LogoVAZ functioned as a centre for the implementation of scientific research into advanced software and sold software to different research institutes in the USSR. However, later, the company moved into the automobile business: first as an importer of second-hand cars to Russia, and then, once private dealerships were made legal, as a reseller of AvtoVAZ-manufactured vehicles to private buyers.

Anros and Forus

62. Between 1989 and 1991, Mr. Berezovsky and Mr. Glushkov met with André & Cie, a Swiss commodities trader which was a major buyer and exporter of commodities produced in the Soviet Union. The result of those discussions was that, in 1991, it was agreed that André & Cie should take a stake in LogoVAZ, and would replace Logosystems as shareholder. As a result, LogoVAZ was restructured into a closed joint stock company (rather than a Russian joint venture). A special purpose vehicle, a newly formed Swiss company, Anros SA, was created to enable André & Cie to co-invest in LogoVAZ. The shares in Anros SA were held as to 10% by André & Cie and as to 90% by Mr. Berezovsky, Mr. Glushkov, Mr. Patarkatsishvili, Mr. Kadannikov and others. The name Anros reflected a combination of the name "André & Cie" with "Rossiya" (or "Russia") to represent the two sides of the arrangement.

63. In 1992, with the assistance of André & Cie, Mr. Berezovsky initiated the establishment of the Forus group of companies, in order to provide Western project finance and import financing arrangements to support the operations of AvtoVAZ. The top group holding company was Forus Holdings SA, a Luxembourg company ("Forus"). Mr. Berezovsky, together with Mr. Patarkatsishvili, Mr. Glushkov, Mr. Kadannikov, André & Cie and other of Mr. Berezovsky's associates were apparently shareholders in Forus at this early stage.

Consolidated Bank

64. As a result of changes in the law in Russia in the late 1980s, private enterprises were allowed to develop and own their own banking operations. In the 1990s, banking became one of the most popular businesses as the new free market began to spread. Many large companies and businessmen established their own corporate banks, as there was little confidence within the business community in the State-controlled banking sector.

65. Consolidated Bank, (sometimes referred to Obyedinenniy Bank) was a bank set up by LogoVAZ on Mr. Berezovsky's initiative in 1992, in order to support LogoVAZ's business interests and in the hope that it would develop into a successful business of its own. As such it was, in effect, the in-house bank of LogoVAZ. It was common ground that Mr. Berezovsky was in a position, by virtue of his management control of LogoVAZ, to exercise effective management control over Consolidated Bank. However, Mr. Berezovsky's actual ownership interest in Consolidated Bank was small. The Quarterly Reports on Securities for Consolidated Bank disclosed that, as at the last quarter of 1996, Consolidated Bank was owned by five companies:

20% AvtoVAZ, the Russian State car manufacturer
35% LogoVAZ
10% PKB AvtoVAZbank, a subsidiary of AvtoVAZ and LogoVAZ
5% TOO Atol-Ltd
30% Forus

66. Of these companies, it appeared that in 1995 Mr. Berezovsky himself held only a 6.78% direct interest in LogoVAZ, a 25% interest in Atol and at most a 33.33%

interest in Forus. In combination, these would have given him at most a 13.7 % indirect interest in Consolidated Bank.

67. In 1994 or 1995, Mr. Berezovsky offered Ruslan Fomichev ("Mr. Fomichev") a senior role at Consolidated Bank. He later became chairman of the Executive Board of Consolidated Bank and Mr. Berezovsky's chief aide, and "in-house" financial adviser. However, although at an earlier stage of the proceedings Mr. Berezovsky indicated that Mr. Fomichev would be called as a witness on his behalf, subsequently, before trial, the two men fell out and, in the event, Mr. Fomichev was not called as a witness. I deal with certain matters relating to Mr. Fomichev below.

68. In 1993, Mr. Berezovsky established an entity called All Russian Automobile Alliance ("AVVA") in order to engage in the construction of a new automobile assembly plant at Togliatti. The founding members of AVVA included AvtoVAZ, LogoVAZ, Forus and Consolidated Bank. Mr. Berezovsky was General Director. The scheme was that AVVA would raise funds by selling shares both privately and to members of the public. However, for various reasons the scheme failed. It was alleged on Mr. Abramovich's behalf that AVVA was involved in pyramid selling, an allegation which Mr. Berezovsky denied. It is not an issue which I need to decide.

Andava

69. In early 1994, AVVA and André & Cie participated in the establishment of a joint venture company called Andava SA ("Andava"). Andava was set up to raise capital in the West for AVVA and as a treasury centre for AVVA. However, it does not appear that Western capital was in fact raised for such purpose. From 1996, Andava provided central treasury services for Aeroflot, the Russian State airline, but, according to Mr. Berezovsky, that was not something which was apparently envisaged when Andava was founded. Although Mr. Berezovsky and Mr. Glushkov had no ownership interest in Aeroflot[31], they received, through Andava, various income streams derived from Andava's dealings with Aeroflot. As described below, this subsequently led to warrants being issued for both Mr. Berezovsky's and Mr. Glushkov's arrest on charges of fraudulent misappropriation of Aeroflot's funds.

Mr. Berezovsky's political career

70. According to Mr. Berezovsky, from about 1992 his main interest had been politics and his business activities had served mainly as a vehicle for funding his political career. During 1993 and 1994, LogoVAZ was subject to repeated, violent attacks. Then, on 7 June 1994, Mr. Berezovsky himself was the victim of an assassination attempt. As he was leaving the LogoVAZ club, a remote-controlled bomb exploded, killing his driver instantly and severely injuring his bodyguard. Mr. Berezovsky was badly burned and went to Switzerland for medical treatment.

71. Whilst recuperating in Switzerland, Mr. Berezovsky decided that:

> "… in order to help to ensure the development of a stable democratic society and a secure political base for

[31] When cross-examined on this point, Mr. Berezovsky confirmed Mr. Glushkov's written evidence that he, Mr. Berezovsky, did not have a shareholding in Aeroflot (although it transpired during Mr. Glushkov's oral evidence that Consolidated Bank did at one point have a stake, which had been sold prior to 1999).

entrepreneurship and the free market in Russia, he would become active in politics[32]."

72. In his evidence he stated that he believed passionately in the importance of preventing Russia from relapsing into communism and that at that time he had concluded that the best way to promote a democratic political agenda would be through owning key mass media outlets.

Mr. Berezovsky's business and political contacts

73. In the course of Mr. Berezovsky's business dealings, he developed various business and social relationships which he utilised, both commercially and politically, in the years to come. These relationships included *inter alia,* relationships with:

i) Mr. Kadannikov, who, as described above, was AvtoVAZ's General Director, and later First Deputy Prime Minister; Mr. Berezovsky described him as "one of Russia's major industrialists";

ii) Alexander Voloshin ("Mr. Voloshin"), later Chief of the Presidential Administration under both President Yeltsin and President Putin; Mr. Berezovsky had worked with Mr. Voloshin at AVVA;

iii) Viktor Gorodilov ("Mr. Viktor Gorodilov"), whom Mr. Berezovsky met in 1993; Mr. Viktor Gorodilov was President of Noyabrskneftegaz, the oil production company, which was subsequently incorporated into Sibneft by Presidential Decree; Mr. Viktor Gorodilov became Sibneft's first President and Chairman of the Board of Directors;

iv) Mr. Putin, whom Mr. Berezovsky met for the first time in October 1991, at a meeting at which Mr. Berezovsky introduced an Oklahoman oilman to the mayor of St Petersburg, for whom Mr. Putin was then working; Mr. Putin helped Mr. Berezovsky to develop LogoVAZ's business in St Petersburg, and the two men became friendly, even sometimes holidaying together;

v) various businessmen who, like him, would later be known as "oligarchs"; these included:

a) Pyotr Aven ("Mr. Aven"), Minister of External Economic Relations between June and December 1992, co-founder of Alfa Group consortium with Mikhail Fridman ("Mr. Fridman");

b) Mr. Fridman;

c) Mikhail Khodorkovsky ("Mr. Khodorkovsky"), who controlled Bank Menatep and was a controlling shareholder of Yukos Oil Company;

d) Alexander Smolensky ("Mr. Smolensky"), President of SBS-Agro Bank.

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[32] Mr. Berezovsky's written opening submissions, paragraph 173.

74. From 1994 onwards, Mr. Berezovsky acquired considerable influence over the inner circle of advisers surrounding President Yeltsin. In particular, he enjoyed privileged access to:

i) Tatyana Dyachenko ("Ms. Dyachenko"), President Yeltsin's daughter;

ii) Valentin Yumashev ("Mr. Yumashev"), President Yeltsin's former Chief of Staff and (from 2001) married to Ms. Dyachenko; he introduced Mr. Berezovsky to President Yeltsin in late 1993 and proposed that Mr. Putin be made head of the FSB in 1998;

iii) General Alexander Korzhakov, Head of President Yeltsin's Security Service, 1993-1996; and

iv) other top-level politicians and members of the government.

75. Mr. Berezovsky also had strong connections with Viktor Chernomyrdin (Prime Minister of Russia from 1992-1998), who was a neighbour of Deputy Prime Minister Soskovets, and with General Alexander Lebed, a political rival of President Yeltsin. General Lebed later became Governor of the Krasnoyarsk region, a region which acquired some importance during the so-called "aluminium wars" of the late 1990s.

76. Mr. Berezovsky was therefore extremely well connected in political circles at the time he met Mr. Abramovich.

The LogoVAZ club

77. The centre of Mr. Berezovsky's network of influence was the LogoVAZ club in Moscow. It plays a part in this story. This was the place where Mr. Berezovsky spent almost all of his working time when he was not travelling. It was also the place he used as the main venue for meetings with business partners and associates, politicians and friends. Mr. Berezovsky did however travel very frequently, and it was commonplace for his business meetings to take place outside Russia. Mr. Berezovsky described the function of the club as follows[33]:

> "34 In the spring of 1993 we completed the construction of the 'LogoVAZ club' in Moscow. This became the centre of my business operations and when I was not travelling, I spent almost all of my working time there and used this as the main venue for meetings with my business partners and associates as well as with friends and politicians. When I was working at the LogoVAZ club I would usually have meetings there all day. We had our own restaurant and so meetings would continue as we would move from our offices into the restaurant. I could often work for a period of twenty-four hours or more without leaving the club."

[33] See paragraph 34 of his 4th witness statement.

ORT

78. In the course of 1994, Mr. Berezovsky used his political influence and contacts to persuade President Yeltsin to authorise the partial privatisation of the Russian State Television and Radio Broadcasting Company, Ostankino, which was then the only television network in Russia with a nearly universal reach across the national territory. Mr. Berezovsky argued that the channel could be used to support the interests of democratically inclined Russians whose interests were represented by President Yeltsin's re-election campaign. President Yeltsin ultimately agreed to the proposal on the basis that the State would retain majority ownership of the channel.

79. It was proposed that Ostankino's assets should be transferred to a new company, OAO Obshestvennoye Rossiyskoe Televvidenie ("ORT"), with a view to its being partially privatised. ORT had been created by Presidential Decree on 29 November 1994. The plan was for the State to sell 49% of the shares in ORT to a syndicate of private investors organised by Mr. Berezovsky, whilst retaining a controlling 51%. The 49% shareholders would be expected to fund ORT's media operations, and in return would obtain effective editorial control. Thus although, technically, the private investors were buying a minority stake in a State-owned company, in fact, the votes of minority shareholders of ORT were necessary for central aspects of its decision-making. For example, under ORT's Charter, a quorum of 2/3 was necessary for the General Meeting of Shareholders, and a simple majority vote at a General Meeting of Shareholders was insufficient for the appointment of the Board of Directors. At the original privatisation of ORT, Mr. Berezovsky and Mr. Patarkatsishvili acquired 8% through LogoVAZ. In addition, Mr. Berezovsky persuaded a number of 'oligarchs' with whom he had a relationship, to take stakes in ORT, on the basis that they would allow Mr. Berezovsky to manage their shareholdings on their behalf. In September and October 1995, Mr. Berezovsky was given a power of attorney over their shareholdings (which effectively gave him control of their ORT shares).

80. ORT began operations on 1 April 1995. Subsequently, from 1996 onwards, Mr. Berezovsky and Mr. Patarkatsishvili bought out the shareholdings of the other private shareholders, who did not wish to incur the costs of running the station, so that, by the end of the 1990s, they had 49% of the shares, held through two companies (LogoVAZ and ORT-KB) and management control of the station through its board. Mr. Berezovsky persuaded Mr. Patarkatsishvili to take over as ORT's First Deputy General Director, a role which he held until 2000.

81. By the time of the Russian presidential elections in the summer of 1996, there was real concern in certain quarters of the Russian electorate that the Communists might be re-elected. Mr. Berezovsky's evidence was that, at the World Economic Forum in Davos in February 1996, he became concerned that the Communist candidate, Gennady Zyuganov ("Mr. Zyuganov"), Leader of the Communist Party of the Russian Federation, might win the next Russian presidential election due to be held on 3 July 1996.

82. Mr. Berezovsky anticipated that, with the benefit of editorial control, he would be able to use ORT to assist President Yeltsin to win the 1996 presidential election. He organised a high profile media campaign supporting President Yeltsin's re-election, in which ORT played a major part.

83. On 3 July 1996 Mr. Yeltsin was re-elected President with 54% of the vote, with Mr. Zyuganov achieving 40%.

84. On 9 August 1999, Vladimir Putin ("Mr. Putin", or "President Putin") was appointed acting Prime Minister by President Yeltsin. On 1 January 2000, Mr. Putin became acting President of Russia. On 26 March 2000, he was elected President and, on 7 May 2000, was inaugurated as such.

Mr. Berezovsky's public profile

85. Thus the evidence established that Mr. Berezovsky in his prime was the archetypal "well-connected powerbroker". According to Professor Fortescue, in the early and mid-1990s Mr. Berezovsky was "one of the most politically influential 'oligarchs' in Russia", an assessment with which Mr. Berezovsky readily agreed in cross-examination. Professor Fortescue identified three main factors which accounted for his influence: (i) his relationship with the so-called family advisers of President Yeltsin; (ii) his close relations with other "oligarchs"; and (iii) his media interests.

86. This was broadly confirmed by Mr. Berezovsky, with the characteristic proviso that the main factor accounting for his influence was "my intellectual capacity". Mr. Berezovsky's ability to lobby for the creation and privatisation of ORT, and its transfer into his control, and thereafter to run it, apparently without interference, clearly demonstrated the level of influence which he was able to exert at the time. The evidence also established that he exercised close control over its editorial policy and that, between 1995 and 2000, editorial control of ORT was the main source of Mr. Berezovsky's political influence.

The alleged joint venture between Mr. Berezovsky and Mr. Patarkatsishvili

87. Mr. Patarkatsishvili was a Georgian citizen who began his career in the Georgian operations of the State-owned car manufacturer AvtoVAZ. By 1980/81 he had become head of the division responsible for the distribution of spare parts in the Caucasus. He later told Mr. Berezovsky's solicitors that he had provided the start up capital for LogoVAZ in 1989, or at least for Mr. Berezovsky's share of it. At some stage he moved to Moscow at Mr. Berezovsky's invitation to join its management. Mr. Berezovsky's account of the origins of their relationship was rather different. He said that Mr. Patarkatsishvili joined LogoVAZ as an employee in 1992, at a time when he had no significant private assets. By 1994, he had risen under Mr. Berezovsky's patronage to become its First Deputy General Director for Commerce, and had begun to acquire a modest shareholding (4%) in LogoVAZ as well as interests in other enterprises in which Mr. Berezovsky was involved. It is not necessary for me to decide any issues about the origins of the two men's business relationship in these proceedings, and I do not do so. It was common ground that Mr. Patarkatsishvili's strong feature was that he was an outstanding financial manager. According to Eugene Shvidler ("Mr. Shvidler"), one of Mr. Abramovich's close business associates, who was President of Sibneft from July 1998 to October 2005, and Chairman of the Board of RusAl from 2000 – 2003, Mr. Patarkatsishvili also had a reputation, apparently acquired in Georgia, as a "tough guy" with connections to even "tougher individuals". When, in early 1995, Mr. Berezovsky acquired an interest in ORT, Mr. Patarkatsishvili was very quickly installed as its First Deputy General Director. In about March 1995, while his discussions with

Mr. Berezovsky were continuing, Mr. Abramovich first met Mr. Patarkatsishvili at the LogoVAZ club.

88. Mr. Berezovsky alleges that in 1995 he reached agreement with Mr. Patarkatsishvili that, unless otherwise agreed, they would participate in any future and existing businesses on a 50:50 basis. As I have already mentioned, that is disputed, in particular by the defendants in the Chancery proceedings. As a result of an earlier decision of mine dated 6 May 2011, in which I refused Mr. Berezovsky leave to amend to raise the point in his claim against Mr. Abramovich, it is common ground that it is not an issue which can or should be resolved at this trial. Mr. Abramovich's position is that he appreciated that Mr. Berezovsky and Mr. Patarkatsishvili were close business associates but never knew the exact nature or terms of their relationship. Mr. Berezovsky claims to have told Mr. Abramovich in 1995 that he had a 50:50 partnership with Mr. Patarkatsishvili, who managed their joint business. Mr. Abramovich does not accept that he was told this. Again, these are not issues which arise for determination at this trial, and are not issues which can subsequently be raised as against Mr. Abramovich.

Additional relevant events in relation to Mr. Berezovsky and Mr. Patarkatsishvili not directly connected with the issues in the case

89. The following is a summary of additional relevant events in relation to Mr. Berezovsky and Mr. Patarkatsishvili which are, to a lesser or greater extent, connected with the issues in the case. They are largely, but not exclusively, taken from the agreed chronology:

30 October 1996	Mr. Berezovsky was appointed Deputy Secretary of the Security Council of the Russian Federation
5 November 1997	Mr. Berezovsky was dismissed from the Security Council of the Russian Federation
29 April 1998	Mr. Berezovsky was appointed Executive Secretary of the Commonwealth of Independent States
13 November 1998	*Kommersant* newspaper published an open letter from Mr. Berezovsky to Mr. Putin in which Mr. Berezovsky called on Mr. Putin to deal with various criminal and corrupt elements in government
18 January 1999	General Prosecutor commenced an investigation into Aeroflot and alleged misappropriation of its funds
2 April 1999	Mr. Berezovsky was dismissed from his post as Executive Secretary of the Commonwealth of Independent States
6 April 1999	Mr. Berezovsky was named in an arrest warrant in relation to the Aeroflot investigation
6 May 1999	The Russian Public Prosecutor requested the assistance of the Swiss authorities in regard to the Aeroflot investigation
4 November 1999	The Aeroflot case against Mr. Berezovsky was closed
31 May 2000/ 1 June 2000	Mr. Berezovsky published an open letter to President Putin, criticising the latter's approach in a number of

	political matters
13 June 2000	Mr. Valdimir Gusinsky, chairman and owner of Media Most, Most Bank and the television network NTV, was arrested on fraud charges, and imprisoned. He was subsequently released on 16 June 2000. He agreed to sell his shares in Media Most
17-19 July 2000	Mr. Berezovsky resigned from the Duma, ostensibly to launch "a constructive opposition" to President Putin
20 July 2000	Mr. Gusinsky signed an agreement to transfer his shares in Media Most (which controlled NTV) to the State-owned Gazprom, in return for an undertaking from Mr. Mikhail Lesin that the criminal charges would be terminated. Mr. Lesin was Minister for Press, Television, Radio Broadcasting and Media Communication from 1999-2004
12 August 2000	The *Kursk* submarine tragedy occurred: 118 men were killed in the Barents Sea. ORT broadcast a critical account of President Putin's handling of the tragedy
24 August 2000	Financial Times published an article reporting President Putin's hostile reaction to the criticism of the *Kursk* tragedy
4-5 September 2000	Mr. Berezovsky published an open letter to President Putin, stating that he, Mr. Berezovsky, had been issued an ultimatum - to transfer his stake in ORT or follow Mr. Gusinsky. Mr. Berezovsky publicly announced his wish to put ORT shares into an entrusted management scheme managed by journalists
2nd week of September 2000	President Putin made a remark about Mr. Berezovsky's role in the Aeroflot case changing from that of a witness to that of a suspect
17 October 2000	Mr. Berezovsky attended the Prosecutor's Office for questioning, in answer to an official summons
26 October 2000	*Le Figaro* published an interview with President Putin in which he was reported as saying, in respect of the oligarchs that: "… the State is holding a big club in its hands, which it will use only once. To deliver a crushing blow on the head"
30 October 2000	Prosecutor Kolmgorov announced on television his intention to bring new charges against Mr. Berezovsky in relation to Aeroflot. This provoked Mr. Berezovsky's flight from Russia to France
1 November 2000	Mr. Berezovsky and Mr. Glushkov were summoned to appear before the Prosecutor-General on 13 November 2000, for questioning in regard to Aeroflot
About 13 November	It was announced in *Kommersant* that the interview

2000	was about to take place and that Mr. Berezovsky and Mr. Glushkov would be arrested
5 December 2000	The Prosecutor's Office formally drew up the charges and made the formal decision to arrest Mr. Glushkov when he appeared for the interview on 7 December 2000
7 December 2000	Mr. Glushkov was arrested in Moscow
11 April 2001	Mr. Glushkov was accused of attempting to escape custody. Mr. Patarkatsishvili charged with aiding Mr. Glushkov
27 October 2001	Mr. Berezovsky applied for asylum in the UK
29 January 2002	The Aeroflot investigation was resumed
10 September 2003	Mr. Berezovsky's application for asylum in the UK was successful
12 March 2004	Judgment in Russia against Mr. Glushkov, who was convicted of "abuse of power", failure to return money to Russia, and attempted escape, but was released on account of the time which he had spent in custody
July 2006	Mr. Glushkov left Russia and went to the UK
3 July 2006	Mr. Glushkov was convicted of fraudulent embezzlement in relation to Aeroflot and Andava by a Russian court
29 November, 2007	Mr. Berezovsky was convicted *in absentia* of fraudulent embezzlement in relation to Aeroflot and Andava, by the Savelovsky District Court at a time when he was in the UK having claimed asylum on the basis of his fear of persecution in Russia; (Mr. Berezovsky denies the charges)
12 February 2008	Death of Mr. Patarkatsishvili in England

Section VII - Approach to the evidence

Significant features of the case

90. There were a number of significant features of the case which the court had to bear in mind when approaching the evidence.

91. First, at the core of the dispute between the parties were four highly contentious alleged oral agreements, relating to substantial assets which, if established, had serious financial and commercial consequences for the alleged parties to those agreements. Every, or almost every, aspect of the alleged agreements was in dispute. Significantly, there were no contemporaneous notes, memoranda or other documents recording the making of these alleged agreements or referring to their terms. Such documents as were relied upon by Mr. Berezovsky as circumstantial evidence supporting his case, were usually (but not invariably) considerably later in origin than the alleged agreements; they were not documents that were communicated to Mr. Abramovich or his representatives; and were documents which were open to various interpretations as to whether they were supportive of Mr. Berezovsky's case.

92. Second, the oral evidence relating to such claims was extremely stale. The court was being asked, in effect, to make findings based on limited direct evidence relating to events which occurred many years ago; these included the alleged agreements between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili in 1995 and 1996 relating to Sibneft; between the three men in 1999 relating to the aluminium interests; the alleged Dorchester Hotel Agreement said to have been concluded between Mr. Abramovich, Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Deripaska on 13 March, 2000, relating to RusAl; and alleged threats said to have been made by Mr. Abramovich relating to the sale of Mr. Berezovsky's and Mr. Patarkatsishvili's interests in ORT in 2000, and in relation to their alleged interests in Sibneft in 2001. In a case which is dependent upon establishing oral agreements, evidence relating to events which occurred a long time ago necessarily gives rise to particular problems. Apart from the fact that, not surprisingly, it is often difficult for witnesses to remember what happened many years ago, and they can rarely be expected to remember the specific words which they used, witnesses can easily persuade themselves that their recollection of what happened is the correct one. That problem was compounded in this case by the fact there had been substantial summary judgment proceedings, followed by the appeal to the Court of Appeal, during the course of which round after round of evidence was produced by various witnesses on each side. Given the substantial resources of the parties, and the serious allegations of dishonesty, the case was heavily lawyered on both sides. That meant that no evidential stone was left unturned, unaddressed or unpolished. Those features, not surprisingly, resulted in shifts or changes in the parties' evidence or cases, as the lawyers microscopically examined each aspect of the evidence and acquired a greater in-depth understanding of the facts. It also led to some scepticism on the court's part as to whether the lengthy witness statements reflected more the industrious work product of the lawyers, than the actual evidence of the witnesses. However, it would not have been practical, given the length and complexity of the factual issues involved, for the court to have required evidence in chief to have been given orally. It was for that reason that cross-examination, in particular of Mr. Berezovsky and Mr. Abramovich, assumed such a critical importance.

93. Third, the lapse of time and staleness of the claims also gave rise to the inevitable problem that the court did not have before it all the evidence which it might otherwise have done, had the dispute been resolved nearer the time that the alleged oral agreements had been made, rather than 16 years after they were alleged to have been concluded. A number of witnesses, who would, or might, have been able to have given key evidence, were dead; these included Mr. Patarkatsishvili himself, an English solicitor, Stephen Curtis ("Mr. Curtis") and two other English solicitors, Nick Keeling ("Mr. Keeling") and Mr. Stephen Moss ("Mr. Moss"). A number of witnesses were not prepared to give evidence. Documents which might have been available at the time had been destroyed in the normal course of business, or were not able to be found.

94. Fourth, the burden of proof was on Mr. Berezovsky to establish his claims. As the only witness, on his side, who could give direct oral evidence of the making of the alleged agreements or the alleged threats, the evidential burden on him was substantial. Whilst Mr. Rabinowitz submitted in his oral closing submissions that:

> "… there was one overarching question that the court will want to ask itself, namely has Mr. Abramovich on his case provided a plausible explanation for the enormous and indeed admitted payments made to Mr. Berezovsky and Mr. Patarkatsishvili",

this somewhat distorted the reality that the burden of proof at all times lay fairly and squarely on Mr. Berezovsky. It was true that the evidential burden shifted to Mr. Abramovich to explain the reason for the substantial payments which he made to the two men (and this is a topic with which I deal below), but, ultimately, it was for Mr. Berezovsky to convince the court, on the balance of probabilities, that the alleged oral agreements and threats had indeed been made, not for Mr. Abramovich to convince the court otherwise.

95. Fifth, as I have already mentioned, the context in which the business arrangements between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili were concluded was the Russian business and political environment in the period 1995-2001. Whilst the respective parties' historical experts were able to give certain background evidence in relation to the period, ultimately it was for the court to decide whether, or the extent to which, that context explained or informed the probabilities of the arrangements being as respectively contended for by either side. The Russian context gave rise to another problem; apart from the fact that many witnesses gave their evidence in Russian, the business arrangements between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would have been discussed, made and conducted in Russian; the nuances of the words used between them in such discussions would not necessarily be conveyed in translation to the non-Russian speaker; particular care therefore had to be taken when considering, for example, information given by Mr. Patarkatsishvili to non-Russian speakers such as Mr. Curtis, and Mr. Berezovsky's English solicitors.

96. Sixth, this case fell to be decided almost exclusively on the facts; in the event, very few issues of law were involved. Because of the nature of the factual issues, the case was one where, in the ultimate analysis, the court had to decide whether to believe Mr. Berezovsky or Mr. Abramovich. It was not the type of case where the court was able to accept one party's evidence in relation to one set of issues and the other party's evidence in relation to another set of issues.

Credibility of the principal witnesses

Mr. Berezovsky

97. Because both the Sibneft and the RusAl claims depended so very heavily on the oral evidence of Mr. Berezovsky, the court needed to have a high degree of confidence in the quality of his evidence. That meant confidence not only in his ability to recollect things accurately, but also in his objectivity and truthfulness as a witness. Before addressing his credibility in more detail, I record that Mr. Berezovsky spoke excellent English. Although his evidence did not always appear on the transcript as syntactically correct, it was easy to understand. Sometimes he had difficulty in expressing himself and I give full allowance for the fact that, under pressure, he may sometimes have given an answer which did not accurately reflect what he wanted to say. But he gave his evidence in an assured and confident manner and had little, if any difficulty, in understanding the questions put to him in cross-examination by

Mr. Sumption. Indeed he gave the impression, if not of precisely enjoying the experience, at least of relishing the opportunity to present his story to the court and a large audience, and to fence with Mr. Sumption. However, I have little doubt that he found the experience a stressful one. At all times he had a Russian interpreter at his side, who was able to provide immediate assistance on the relatively few occasions he required it. He appeared to have diligently read the transcripts. He was cross-examined for seven days in all, six days by Mr. Sumption and, on the seventh day, by Mr. Malek and Mr. Adkin. He was unfailingly courteous to the court and to counsel who cross-examined him.

98. A court's assessment of the credibility of a witness is not meant to be some sort of pseudo-psychological analysis of his character. But, as submitted by Mr. Sumption, Mr. Berezovsky's personality was one of the dominant themes of the trial, which provided a key to his credibility as a witness, as well as an explanation for his evidence in relation to some of the critical events. For that reason, it is appropriate to refer to certain aspects of his personality which were displayed in his evidence, and in his demeanour. In his time, Mr. Berezovsky had clearly been a person of real political significance in Russia, who had played his part in its transition from a Communist state to a free market and capital-based economy. He was, and is, as he would be the first to profess, an intelligent man, who was able to engender considerable loyalty and support from the many people around him who believed in his abilities and powers of influence. He had been a skilful manipulator of the Russian media, and was astute in deploying it, and his numerous contacts, in order to achieve his political and personal goals. He certainly regarded himself as a champion of the free press in Russia. But, by the time of the trial he had been in exile for some 11 years, and was no longer a colossus bestriding centre stage of the Russian political scene, as he had once been. The evidence demonstrated that he personally resented Mr. Abramovich, whom he regarded as a former protégé whom he had created from nothing, but who had survived under a Russian regime, which Mr. Berezovsky hates, for what he regards as its unacceptable political values and for driving him into exile. The evidence also established that Mr. Berezovsky resented the business stature and wealth which Mr. Abramovich had acquired, as a result of being publicly perceived as the owner of Sibneft and, with Mr. Deripaska, as the creator of RusAl.

99. The manner in which he gave, and the content of, his evidence also showed him to be a man with a high sense of his own worth, who was keen to portray himself as the central and indispensable figure in political and commercial events. The following are examples from the transcripts:

i) in cross-examination by Mr. Sumption:

> "A. … again, it's very important that you understand. I never can make millions, or ten millions, I can make just billions, and I explain you why: because all the time I thought about how to capitalise the country, not the company, yes? Impossible to capitalise oilfields or Sibneft without clear understanding that political situation is stable. And my point was that maybe I was one of the first who recognised that if you have

political stability, the value of the company will increase enormously[34].”

ii) Again in cross-examination by Mr. Sumption:

Q. Professor Fortescue gives three reasons for regarding you as one of the most politically influential oligarchs: I’m going to list them and then ask you whether you agree. First, your relationship with the so-called family advisers of President Yeltsin; secondly, your close relations with other oligarchs; and thirdly, your control of media interests.

Would you agree that those three factors were the main reasons for your political influence?

A. I think the main reason is not here mentioned at all: it’s my intellectual capacity[35].”

iii) And in cross-examination by Mr. Adkin:

“Q. I assume that you would accept that your Russian history expert knows about Russian history?

A. Definitely he knows. Much less than me, but knows.

Q. Would you look at paragraph 83 ….

A. Because I made the history; he just learned the history[36].”

iv) Another example was his attempt to portray himself, in a reference written by a former British ambassador in support of Mr. Berezovsky’s application for asylum, as having played the principal role in bringing home two British hostages (as well as other hostages) from Chechnya. The reality, as the evidence demonstrated, was that it was Mr. Patarkatsishvili who retrieved the hostages from Chechnya and Mr. Abramovich who paid the ransom for their release.

100. On my analysis of the entirety of the evidence, I found Mr. Berezovsky an unimpressive, and inherently unreliable, witness, who regarded truth as a transitory, flexible concept, which could be moulded to suit his current purposes. At times, the evidence which he gave was deliberately dishonest; sometimes he was clearly making his evidence up as he went along in response to the perceived difficulty in answering the questions in a manner consistent with his case; at other times, I gained the impression that he was not necessarily being deliberately dishonest, but had

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34 Day 4, page 30.

35 Day 4, page 15. It was characteristic of Mr. Berezovsky that he had not bothered to read Professor Fortescue’s report prior to the trial.

36 Day 10, page 72.

deluded himself into believing his own version of events. On occasions he tried to avoid answering questions by making long and irrelevant speeches, or by professing to have forgotten facts which he had been happy to record in his pleadings or witness statements. He embroidered and supplemented statements in his witness statements, or directly contradicted them. He departed from his own previous oral evidence, sometimes within minutes of having given it. When the evidence presented problems, Mr. Berezovsky simply changed his case so as to dovetail it in with the new facts, as best he could. He repeatedly sought to distance himself from statements in pleadings and in witness statements which he had signed or approved, blaming the "interpretation" of his lawyers, as if this somehow diminished his personal responsibility for accounts of the facts, which must have been derived from him and which he had verified as his own.

101. Whilst I can readily understand that, in a case of this sort, which involved a considerable amount of evidence at the interlocutory stage given by lawyers on instructions[37], it is not surprising that the principal witness ultimately describes aspects of the case in significantly different terms, that could not excuse the extent of Mr. Berezovsky's deviations from his previous case as presented in his pleadings and witness statements. His "I blame my lawyers" excuse was not convincing. Finally, it was obvious that Mr. Berezovsky approached his evidence, as he approached his financial affairs, with what Mr. Sumption described as "an imperial level of generality". That again was a factor which had to be borne in mind when assessing his credibility.

102. In public interviews with the media prior to June 2001, Mr. Berezovsky had consistently and clearly denied, whenever directly asked, that he was a shareholder in Sibneft. He had never suggested in such interviews (which were frequently based on the journalist's assumption that he indeed had such a shareholding, whether held directly or indirectly through other companies) that he had a beneficial interest in, or some sort of contractual entitlement to, Sibneft shares pursuant to arrangements with Mr. Abramovich. In cross-examination he saw nothing wrong (on the basis that he was correct in his claim that he had a beneficial interest in Sibneft shares) in misleading journalists in this respect.

103. In this judgment I have identified numerous instances where I have not been able to accept Mr. Berezovsky's evidence. Although there are many other instances demonstrating Mr. Berezovsky's lack of credibility as a witness, for present purposes it is sufficient to cite the following additional examples:

    i) In 1997, Mr. Berezovsky sued *Forbes* magazine for libel in the English High Court. In response to the justification defence put forward by *Forbes,* Mr. Berezovsky denied in pleadings and statements many of the facts alleged by Forbes. However, in the present proceedings, Mr. Berezovsky relies upon many of those same facts, which he now says are true, as the basis for his claims in respect of Sibneft. There were significantly inconsistencies between the evidence which he gave in this litigation, and the statements which he made in the *Forbes* litigation. In that case, it suited his purposes to lie about the true nature of his relationship with the Yeltsin government; for example he denied allegations concerning his use of his relationship with Ms. Dyachenko

[37] A practice that I regard as undesirable.

and Mr. Yumashev to influence President Yeltsin; he also denied that he had personally lobbied President Yeltsin or that he had been involved in the "fixing" of the Sibneft loans for shares auction (a topic addressed below). In the present case, however, it suited his purposes to emphasise that relationship and to claim that he had played a significant role in the auction. There was no explanation for the divergences in his evidence other than that, in one case, it suited Mr. Berezovsky to present the facts in one way, and, in the second case, it suited him to present them wholly differently. The attempt which he made in cross-examination to try to explain away the discrepancies was not impressive. I reject the submission that these divergencies were only in relation to minor matters.

ii) Another example was Mr. Berezovsky's evidence about an alleged meeting with Mr. Abramovich in Cap d'Antibes in December 2000 (again, a topic which I address in some detail below). As Mr. Berezovsky admitted in his evidence about this: "I changed my recollection many times[38]." Mr. Berezovsky had consistently said until September 2011 that the meeting occurred at least ten days after the arrest of Mr. Glushkov in late December 2000 or a day or two before Christmas. However, once documents had been discovered showing that he been in the United States during that period, he changed his position and asserted for the first time in a sixth witness statement that the meeting occurred on or very shortly after 7 December 2000[39]. Given the passage of time, I would not have had a problem about that change in dating the occurrence of the meeting, had not Mr. Berezovsky, in his oral evidence, claimed to have an actual recollection that the meeting occurred on 7 December and to be able to give a number of circumstantial details about it. As I find later in this judgment, the meeting did not take place in December 2000, and therefore Mr. Berezovsky must have deliberately fabricated his evidence about this topic.

iii) Another example of Mr. Berezovsky's propensity to change his case, where it was shown not to fit with the known facts, was the change following his Russian law expert's opinion that the alleged 1995 Agreement was insufficiently certain to extend to the partnership said to have been created under its terms in respect of the pre-merger aluminium assets acquired in 2000. In order to meet this difficulty, Mr. Berezovsky introduced a new agreement, said to have been made in 1999, specifically applying to the aluminium assets. Then, when told by his expert that, under Russian law, his claim in relation to RusAl was bound to fail, suddenly, in the face of the summary judgment application, Mr. Berezovsky belatedly recalled a "distinct recollection" that there was an express agreement that "British law" would apply. It is quite normal that a party's case may develop and change in the course of lengthy and complex litigation. But the persistent changes in Mr. Berezovsky's recollections, over the course of the proceedings, in response to a perceived need of what he had to prove, was, to say the least, out of the ordinary.

iv) A further example of Mr. Berezovsky's lack of credibility as a witness was his initial denial in cross-examination that any of his witnesses stood to gain

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38 Berezovsky Day 7, page 74.

39 Berezovsky 6th witness statement, paragraphs 31 and 33.

financially, if he were to be successful in the Commercial court action. In cross-examination on Thursday, 13 October, 2011, he said as follows[40]:

> "MR. SUMPTION: Right. Can you tell us: what other witnesses are due to be called by you in this action stand to gain financially if you win it?
>
> A. Witnesses, I don't know anybody. I have obligation in front of my former wife, Galina, that she will be paid agreed amount of money. As far as witnesses is concerned, nobody, because it's bribing of the witnesses as I understand."

104. But this turned out to be untrue. Two witnesses, Natalia Nosova ("Dr. Nosova") and her husband, Mr. Lindley, a solicitor, stood to gain very substantially if Mr. Berezovsky were to win these proceedings. Mr. Berezovsky's excuse in re-examination, on Monday 17 October, for not giving a truthful answer was wholly unconvincing[41]:

> "Q. I just want to come back, if I may, to page 147 between lines 8 and 12 because there you say that none of your witnesses stand to gain financially if you win the action. Do you see that?
>
> A. Yes, I see that.
>
> Q. My question is this: is Mr. Lindley one of your witnesses?
>
> A. Yes. My Lady, I have read this transcript on the weekend and I am not correct here because my reflection was that did I give was that: did I pay money for witness, yes? Not witnesses. But it's not my English, my English is okay.
>
> My reflection was wrong. And when I read that, I just -- and if you wouldn't put me this question, I in any case arise this question. My -- now -- and I return to this point and try to recollect what's happened.
>
> I have agreement with four people more as a beneficiary if I win against of not only Abramovich, against of anyone: Abramovich or Anisimov or Salford or family, yes? And, as I -- as we discussed now, that I have obligations to pay 5 per cent of this tape, for this recording. But additionally to that I have obligations in front of two witnesses and two who are not witnesses, the same obligation. And the reason

[40] Day 9, page 147.
[41] Day 10, pages 166-167.

> why I have this obligation because those people participate in all my events which we're discussing here."

105. This aspect of his evidence requires greater elaboration. I regard Mr. Berezovsky's attempts to conceal the fact that two of his witnesses, Dr. Nosova and her husband, Mr. Lindley, a solicitor, each stood to gain 1% of Mr. Berezovsky's winnings, (up to $140 million in total) if he won the action, as typical of his attitude towards the integrity of the trial process. Dr. Nosova was one of the key witnesses for Mr. Berezovsky in this litigation. In correspondence and in her disclosure statement, Dr. Nosova sought to emphasise her independence from Mr. Berezovsky for the purposes of disclosure, describing herself as a "businesswoman" who had "use of" an office at Mr. Berezovsky's office premises. Mr. Lindley was described by Dr. Nosova as having a "managerial" role in this litigation although he sought to downplay it by describing it merely as that of a financial controller. He attended at least two meetings with Mr. Berezovsky and Mr. Patarkatsishvili in relation to the litigation in June 2007, where he took lengthy attendance notes and was called to give evidence about them. Mr. Lindley's evidence, to the effect that he had not mentally made the connection between the payment and his evidence, was an astounding answer. In addition, Mr. Berezovsky had agreed to pay 1% of the proceeds of any successful recovery against Mr. Abramovich to a Mr. Cotlick, a long-standing assistant of Mr. Berezovsky's and a qualified Israeli lawyer, who not only assisted Mr. Berezovsky in the conduct of this litigation but who also played a major role, in conjunction with Addleshaw Goddard, in relation to disclosure of Mr. Berezovsky's documents, but who was not going to feature as a witness.

106. These contingency fee agreements were apparently entered into to compensate Mr. Lindley, Dr. Nosova and Mr. Cotlick for managing the litigation on Mr. Berezovsky's behalf. According to Mr. Lindley, he drafted Mr. Cotlick's agreement and Mr. Cotlick (using Mr. Lindley's draft as a template) prepared Mr. Lindley's agreement and that of his wife, Dr. Nosova. The contingency fee arrangements were documented by means of express written agreements about which there can have been no doubt as to their existence or consequences. There was no justification whatsoever for the fact that these arrangements were not disclosed to Mr. Abramovich's lawyers, until they were introduced into evidence by Mr. Rabinowitz in re-examination. Neither Mr. Lindley nor Dr. Nosova referred to their contingency fee arrangements in their witness statements. It was also notable that Mr. Lindley had not informed his firm, Streathers, in which he was a partner, and which had been previously instructed by Mr. Berezovsky in this litigation, of his contingency fee arrangements until their disclosure in the course of Mr. Berezovsky's re-examination, notwithstanding that Streathers were receiving professional fees for his work in connection with the case. Nor were Addleshaw Goddard informed of their existence by any of Dr. Nosova, Mr. Lindley, Mr. Cotlick or Mr. Berezovsky himself. They were first informed on Friday, 14 October, 2011, after Mr. Berezovsky had given his evidence in cross-examination.

107. But, importantly, Mr. Berezovsky's cross-examination was not the first occasion on which the existence of these arrangements had been concealed from Mr. Abramovich and his solicitors, Skadden or, indeed the court. In particular, on 23 March 2011, Mr. Hastings of Addleshaw Goddard served his fifth witness statement. The

background to the statement was the revelation that Mr. Berezovsky had entered into a contingency fee agreement whereby he agreed to pay 5% of any recovery from the claim to the intermediary who had provided the Le Bourget recording. In that context, Skadden had applied for details of that arrangement and for details of any other payments made to any witnesses in the dispute. It was known by that point in time that Dr. Nosova would be a witness. Mr. Lindley was sent a copy of the fifth witness statement of Mr. Hastings and he accepted in cross-examination that he had read it. Mr. Cotlick was referred to expressly in that witness statement. As Mr. Lindley acknowledged, Mr. Cotlick was also aware of Mr. Hastings' witness statement. On 29 March 2011 there was a court hearing at which reference was made to Mr. Hastings' witness statement. Both Mr. Cotlick and Mr. Lindley were present in court on that occasion and, indeed, sat next to each other.

108. Mr. Hastings' fifth witness statement said:

> 37. …
>
> (e) I can confirm that no other payments have been made by Mr. Berezovsky for evidence in these proceedings. A payment was made by Mr. Berezovsky in relation to the Metalloinvest proceedings in the Chancery Action, in order to obtain a copy of the Parex Schedules which show how the RusAl proceeds had been paid...
>
> (f) Finally, Mr. Berezovsky has agreed, in line with the rules set out in the CPR, to compensate certain witnesses for their time lost in assisting him with the preparation of the witness statements to be served in due course to support his case, and the provision of conduct money in the event that they are called to give evidence at trial."

109. The first paragraph of Mr. Hastings' fifth witness statement confirmed that Addleshaw Goddard had instructions to make the witness statement on Mr. Berezovsky's behalf. By a letter dated 13 July 2011, in response to a query from Skadden, Addleshaw Goddard confirmed that paragraphs 37(e) and (f) as set out above "remain correct". Addleshaw Goddard subsequently confirmed that they had instructions from their client to send that letter. As was properly accepted in correspondence by Addleshaw Goddard, in light of the contingency fee arrangements, those paragraphs of Mr. Hastings' witness statement and the confirmation given in the letter dated 13 July 2011 were (unbeknownst to Addleshaw Goddard at the time) incorrect.

110. In such circumstances, I find it difficult to accept that Mr. Berezovsky, Mr. Cotlick, the individual with key responsibility for Mr. Berezovsky's disclosure, and Mr. Lindley, one of the managers of the litigation on Mr. Berezovsky's behalf, did not appreciate that the court, Skadden and Addleshaw Goddard were being misled. But even approaching this incident on the most generous of bases, so far as Mr. Berezovsky is concerned, and assuming that he did not appreciate that there had

been a deception, it still raises real concerns about his attitude to the trial process and his credibility.

111. I should perhaps also say, in this context, that whilst there was, of course, always the possibility that Mr. Abramovich might have made similar, but informal, arrangements promising, but not contracting, to compensate his witnesses for giving testimony supporting his case, there was no evidence suggesting or indicating the existence of such arrangements.

112. Accordingly, I concluded that, in the absence of corroboration, Mr. Berezovsky's evidence frequently could not be relied upon, where it differed from that of Mr. Abramovich or other witnesses. I regret to say that the bottom line of my analysis of Mr. Berezovsky's credibility is that he would have said almost anything to support his case.

The evidence of Mr. Berezovsky's witnesses

113. The witnesses called by Mr. Berezovsky had no direct evidence to give about critical issues such as the alleged 1995, 1996 and 1999 Agreements or the alleged threats in relation to ORT or Sibneft. Nor, with the exception of Mr. David Reuben (whose evidence was not in fact supportive of Mr. Berezovsky's case), and of Mr. Michael Cherney (who declined to appear as a witness, and with whose evidence I deal subsequently), were they able to give any direct evidence in relation to the alleged acquisition by Mr. Berezovsky and Mr. Patarkatsishvili of interests in the aluminium assets or RusAl or in relation to the Dorchester Hotel meeting. These witnesses had not been involved in the relevant events. The most which their evidence amounted to was, effectively, that the evidence which Mr. Berezovsky was giving at trial was consistent with what he had previously told them. All Mr. Berezovsky's witnesses who gave such evidence of previous, allegedly consistent, statements fell into the category of his loyal supporters, who were either fellow exiles with him, or who were, or had at some time been, financially reliant upon him to a considerable extent. Their evidence was almost exclusively derived from what the witnesses had been told by Mr. Berezovsky. They were all plainly motivated by a loyal desire to support evidence that had previously been given by Mr. Berezovsky. Indeed, Mr. Glushkov, who sat through Mr. Berezovsky's evidence, changed his own evidence in relation to whether his arrest had been a foregone conclusion, from the account which he had previously given not only in his witness statement, but also in his own asylum proceedings, apparently in order to support Mr. Berezovsky's revised case on this topic. I could attach very little weight to the evidence of this type given by witnesses such as Mr. Glushkov, Mr. Goldfarb and Mr. Dubov. Their recollection was, not surprisingly, vague as to details, dates and specifics, and, apart from being totally dependent on what Mr. Berezovsky had told them, also required an ability to differentiate between the various occasions on which the particular witness had discussed the issues with Mr. Berezovsky.

114. I had difficulty in accepting Dr. Nosova as a truthful witness. Although she claimed to know a lot about the background to the case, she was not directly involved in the critical discussions or events relating to Sibneft and RusAl. Given her undisclosed contingency fee agreement, and that of her husband, she had a substantial financial interest in the outcome of the proceedings, which clearly coloured her approach to her evidence. She sat in court throughout Mr. Berezovsky's cross-examination and the

impression I formed was that she was motivated by a desire to craft her evidence to promote his case. Apart from her loyalty to Mr. Berezovsky, she departed from her evidence, both written and oral, when it suited her, and at times gave the impression of making up her evidence as she went along. I address specific aspects of her evidence in greater detail below. Consequently, I therefore approached her evidence with considerable caution.

Mr. Abramovich's evidence

115. Mr. Abramovich gave his evidence in Russian which was simultaneously translated. He also had the benefit of having a translator standing beside him throughout his cross-examination to provide linguistic assistance. It was obvious that his ability to speak, understand or read English was limited and I had no reservations about the genuine nature of his wish to give his evidence in Russian. Although it is always more difficult to cross-examine through an interpreter, in this case, because of the technical skills and abilities of the simultaneous translators, that difficulty was significantly reduced. I did not form the impression that Mr. Abramovich in any way used the translation process as a means of evading giving a direct answer or of delaying his answers to any questions put to him. Despite the fact that he gave his evidence in Russian, I was able to form a clear view of his demeanour and credibility from the answers which he gave and the manner in which he gave them. Mr. Abramovich was cross-examined over a period of nine days. He was also unfailingly courteous to the court and counsel who were cross-examining him.

116. In his oral closing submissions, Mr. Rabinowitz submitted that Mr. Abramovich:

> "… whilst undoubtedly a smooth and well-prepared witness, proved himself to be a thoroughly dishonest and cynical witness as well, willing to perpetuate a false case, not only by giving evidence which he knew to be untrue, but also by calling as witnesses his associates who again, as Mr. Abramovich well knew, gave, as they were intended to do, thoroughly untrue evidence designed only to mislead the court[42]."

117. Mr. Berezovsky's written closing submissions contained similar arguments. Thus at paragraph 88 the submission was made:

> "88. Mr. Berezovsky observed of Mr. Abramovich that "*He is good at getting people to like him, and good at psychology in that way. He is good at appearing to be humble*": Berezovsky 4 ¶239 …. Mr. Abramovich's own Written Closing observed that he "*gave careful and thoughtful answers*": at ¶5(4) … It was a highly controlled performance by Mr. Abramovich, who was meticulously prepared for the evidence he would give, and who had worked closely with his witnesses to put forward a story which he calculated would be accepted by the Court. It was also, however, a highly cynical and deceitful manipulation of the trial process."

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[42] Day 41, pages 8-9.

118. But cross-examination is a very revealing process, particularly when it takes place over a number of days and requires the witness to face detailed and intensive questioning in respect of a large number of topics and documents. However well-prepared a witness may be, or however controlled he may appear to be, when giving his answers, it is very rare that the court is not able to reach a conclusion as to whether he is telling the truth or not. Contrary to Mr. Berezovsky's views, Mr. Abramovich did not present himself in cross-examination as a "humble man" or as someone who was attempting to appear likeable, or to be liked. Whilst his demeanour was reserved and restrained, he made no attempt to pretend that he was anything other than a highly successful and very wealthy businessman, who had made a very substantial fortune in the challenging Russian business environment of the 1990s and early 2000s, largely as a result of his and his colleagues' entrepreneurial, management and financial skills. I also had little doubt that, if the need arose, he would have been prepared to act ruthlessly in a business context to achieve his commercial goals.

119. But there was a marked contrast between the manner in which Mr. Berezovsky gave his evidence and that in which Mr. Abramovich did so. Mr. Abramovich indeed gave careful and thoughtful answers, which were focused on the specific issues about which he was being questioned. At all times, he was concerned to ensure that he understood the precise question, and the precise premise underlying the question which he was being asked. He was meticulous in making sure that, despite the difficulties of the translation process, he understood the sense of the questions which were being put to him. To a certain extent that difference, no doubt, reflected the different personalities of the two men, for which I gave every allowance possible to Mr. Berezovsky. But it also reflected Mr. Abramovich's responsible approach to giving answers which he could honestly support. Where he had relevant knowledge, he was able to give full and detailed answers; he took care to distinguish between his own knowledge, reconstructed assumptions and speculation. He was not afraid to give answers which a less scrupulous witness would have considered unhelpful to his case. For example, he never sought to underplay the significant and essential role which Mr. Berezovsky had played in the acquisition of Sibneft, and, likewise, the essential contribution which Mr. Patarkatsishvili had made in connection with the acquisition of the aluminium assets. There were few differences between Mr. Abramovich's oral evidence and the evidence given in his witness statements. Such differences as there were, were largely attributable to the legitimate addition of corroborative detail in response to questions in cross-examination, and to difficulties inherent in the translation process. Whilst, not surprisingly, there were occasions where his evidence was inconsistent, or his recollection was faulty, or had changed over time, none of these occurrences was so startling as to give me concerns about his basic truthfulness and reliability as a witness.

120. I do not accept Mr. Rabinowitz's characterisation of Mr. Abramovich's demeanour in the witness box as "smooth" or "a highly controlled performance" or any pejorative gloss implicit in the suggestion that he had been "… meticulously prepared for the evidence he would give". Mr. Abramovich clearly found the cross-examination process a stressful one, not least because he was <u>not</u> in control of the questions which he was being asked, or of the court process, and because he clearly needed to concentrate hard to understand and answer the questions.

121. I reject the serious allegations made by Mr. Rabinowitz that Mr. Abramovich was a thoroughly "dishonest and cynical witness" who deliberately called witnesses whom he knew would give "as they were intended to do, thoroughly untrue evidence designed only to mislead the court." Neither the evidence, nor my analysis of it, supported that allegation. Likewise I reject the allegation that he manipulated the trial process or engaged in improper collusion with his witnesses, or was part of a "smears and innuendo" campaign.

122. On the contrary, I found Mr. Abramovich to be frank in making concessions where they were due, for example in relation to the backdating of documents, the concealment of his 44% beneficial interest in Sibneft, or in relation to the mis-description of his educational qualifications in a Sibneft circular (the last of which I suspect largely arose as a result of translation difficulties and which were, in any event, of minimal importance). Contrary to the assertion that he, together with Mr. Shvidler and Mr. Tenenbaum, were involved in a smear campaign, Mr. Abramovich was extremely reticent about referring to personal or reputational matters concerning Mr. Berezovsky and did not attempt to embarrass him. What was referred to as the "dressing gown" evidence[43] was initially addressed by Mr. Abramovich in cross-examination in a very low-key way, and was only expanded upon in re-examination when Mr. Sumption pressed him to do so; the evidence was genuinely relevant to the question of how significant and businesslike the Dorchester Hotel meeting really was. Similarly there was no basis for the suggestion that Mr. Abramovich, Mr. Deripaska and Mr. Shvidler had colluded in relation to such evidence, or that Mr. Shvidler and Mr. Tenenbaum had colluded in relation to the text message evidence concerning Mr. Fomichev, with which I deal in greater detail below.

123. In conclusion, I found Mr. Abramovich to be a truthful, and, on the whole, reliable witness.

Mr. Abramovich's witnesses

124. Mr. Abramovich called as witnesses almost every member of his staff who had been concerned with the matters at issue in the litigation, as well as a number of witnesses independent of Mr. Abramovich, such as Mr. Deripaska and Mr. Hauser. Their evidence was broadly consistent with that of Mr. Abramovich. Their evidence was attacked on behalf of Mr. Berezovsky on the basis that, so far as the employees were concerned, their loyalty overrode their honesty, and so far as they and Mr. Deripaska were concerned, that they had colluded in relation to various aspects of their evidence. It is not necessary for me to analyse the detailed evidence relating to the issue of alleged collusion set out in Mr. Berezovsky's closing submissions, Mr. Abramovich's Errata schedule and Mr. Berezovsky's Second Schedule. The allegation was not supported by the evidence. The evidence showed that, although Mr. Abramovich's various witnesses had, to a certain extent, discussed the events in which they had been mutually involved, prior to making their witness statements, each, when making their witness statements and giving their oral evidence had given their own personal evidence and recollection. Indeed Dr. Nosova described a very similar process within the inner circle of Mr. Berezovsky's advisers, as well as their attempts to reconstruct dates and events from documents. Such practices are the normal, everyday reality of

[43] A reference to what Mr. Berezovsky was wearing at the Dorchester Hotel meeting.

litigation, and unobjectionable, provided that the particular witness applies his own mind to what he can remember from his own knowledge, and distinguishes between what he personally can recall and what he has learned from someone else. It is rare to find that the integrity of individual recollection is preserved 100% intact; but, absent something more, such practices do not amount to "collusion". I did not find it "astonishing", as Mr. Rabinowitz suggested, that Mr. Abramovich's witnesses did not refer to these type of discussions in their witness statements. Mr. Berezovsky's witnesses did not do so either.

125. Various individual attacks were also made on the credibility of others of Mr. Abramovich's witnesses, in particular, Mr. Shvidler, Mr. Tenenbaum, Ms. Panchenko, Mr. Gorodilov, Ms. Goncharova, and Ms. Khudyk, on the basis of their loyalty to Mr. Abramovich and other matters. I have carefully taken into account these factors, in my assessment of their credibility and evidence, as well as, in the case of Mr. Shvidler, Mr. Tenenbaum, Ms. Panchenko, and Mr. Gorodilov, their friendship with Mr. Abramovich. I did not find that their loyalty to Mr. Abramovich adversely affected the reliability of their evidence. Mr. Shvidler, Mr. Tenenbaum and Ms. Panchenko were particularly helpful witnesses, who gave their evidence in a straightforward and articulate fashion.

126. I address Mr. Deripaska's evidence below. There was no reason to suppose that he crafted his evidence to suit his purposes in the ongoing claim brought against him by Mr. Michael Cherney[44].

Allegations of non-disclosure

127. Mr. Berezovsky's written closing submissions also contained the allegation that there had been a deliberate policy on Mr. Abramovich's part of destroying documents in order to impede investigations into Mr. Abramovich's dealings, and that this adversely affected the credibility of his case and his witnesses. I address this topic elsewhere but merely comment here that full and satisfactory explanations were given for the absence of certain documents, in particular by Ms. Goncharova. I did not find it at all surprising, given the passage of time and the staleness of Mr. Berezovsky's claim, that certain documents were not available. There was certainly no evidence supporting an allegation of a "deliberate policy of document destruction" on the part of Mr. Abramovich.

The absence of certain witnesses

128. Mr. Rabinowitz invited the court to draw adverse inferences from the fact that Mr. Abramovich did not call Mr. Fomichev, Mr. Smolensky and Mr. Bosov. I was satisfied that Mr. Abramovich had provided persuasive reasons why none of these three men were called as witnesses by him. I deal with the position of Mr. Fomichev in the RusAl section of this judgment. So far as Mr. Smolensky was concerned, I accept that the reason why he was not called was because, in the light of the cross-examination of Mr. Berezovsky and Mr. Abramovich, it became apparent that his evidence was marginal at best. Mr. Bosov was an independent third party witness out of the jurisdiction, whose witness statement was served under a hearsay notice solely to address a disclosure matter relating to an alleged video recording in the possession

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44 *Cherney v Deripaska* 2006 Folio 1218.

of Mr. Abramovich. This was a matter that did not, in the event, arise for the court's determination. Mr. Bosov was nonetheless requested by Mr. Abramovich to give oral evidence, but was not in the event willing to attend to do so. In the circumstances, I draw no adverse inference against Mr. Abramovich in relation to the fact that he did not call any of these three witnesses.

Mr. Anisimov

129. I found Mr. Anisimov to be a reliable and credible witness, who gave evidence about matters directly within his own knowledge and declined to speculate even when invited to do so. I do not consider that his financial interest, as a defendant in the Metalloinvest action provided any reason *per se* why I should not accept his evidence. I address his evidence in greater detail below in the RusAl section of this judgment.

Mr. Anisimov's witnesses

130. Likewise, I address the credibility of Mr. Anisimov's witnesses below.

Executive Summary and conclusion on credibility

131. On my analysis of the entirety of the evidence, I found Mr. Berezovsky an unimpressive, and inherently unreliable, witness, who regarded truth as a transitory, flexible concept, which could be moulded to suit his current purposes. At times the evidence which he gave was deliberately dishonest; sometimes he was clearly making his evidence up as he went along in response to the perceived difficulty in answering the questions in a manner consistent with his case; at other times, I gained the impression that he was not necessarily being deliberately dishonest, but had deluded himself into believing his own version of events. Accordingly, I could not accept Mr. Berezovsky as a reliable and truthful witness.

132. I found Mr. Abramovich to be a truthful, and on the whole, reliable, witness.

Section VIII - Determination of Issue A1

Were agreements made, in 1995 and in 1996 between Mr. Abramovich on the one hand and Mr. Berezovsky and Mr. Patarkatsishvili on the other that they would have an interest in the proportions 50:50 in any shares that they might acquire in any oil company carrying on the business formerly carried on by OAO Omskiy Oil Refinery and OAO Noyabrskneftegaz, and additionally, in the terms alleged by Mr. Berezovsky in his pleadings and in his written and oral evidence?

Introduction

133. Issue A1 correlates with Issue 1 in the Agreed List of Issues

> "What was the nature of the arrangement or agreement between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in relation to the acquisition of Sibneft?"

Issue A1 also addresses Issue 3 in the Agreed List of Issues:

> "Was there an agreement reached in 1996 between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in the terms alleged in paragraph C37 of the Re-re-re-Amended Particulars of Claim?

134. Issue A1 is the most critical issue in the case. Unless Mr. Berezovsky can prove that the agreement entered into between Mr. Abramovich, Mr. Patarkatsishvili and himself in 1995, conferred upon him and Mr. Patarkatsishvili an ownership interest in Sibneft, the remainder of his claims are difficult to establish. That is because, as I have already explained, Mr. Berezovsky's claim to have had an interest in RusAl is ultimately dependent on his assertion that he and Mr. Patarkatsishvili had previously owned half of the aluminium assets which were contributed to the merger with Mr. Deripaska. That suggestion in turn depends upon Mr. Berezovsky's contention that there was an agreement to give him the same interest in the pre-merger aluminium assets as he claims to have had in Sibneft, and that the aluminium assets were acquired with Sibneft assets or with that of his, Mr. Berezovsky's, claimed share in Sibneft profits.

135. However, as I have already explained, because it is necessary to look at the relationship between Mr. Abramovich and Mr. Berezovsky over the entire period to which the action relates, I have had regard to various evidence relating to aspects of the RusAl claim in coming to my conclusion in relation to the Sibneft claims, and vice versa. That is because, for example, evidence of the subsequent conduct of the parties in the period 2000-2004, that might tend to show that Mr. Abramovich was operating as a partner to Mr. Berezovsky and Mr. Patarkatsishvili in relation to RusAl, might have had a bearing on whether the parties had indeed made an agreement in the terms alleged by Mr. Berezovsky to share their business interests on a 50:50 basis.

Common ground in relation to the 1995 arrangements, and areas of dispute

136. It was common ground that there was an agreement or understanding between Mr. Abramovich and Mr. Berezovsky in early 1995 in relation to the creation of Sibneft. There was also a limited measure of common ground about the terms of agreement or understanding. Thus:

    i) It was common ground that Mr. Abramovich and Mr. Berezovsky agreed to co-operate to acquire management control over the company which acquired the businesses of Omsk Oil and Noyabrskneftegaz (in the event, Sibneft).

    ii) It was common ground that Mr. Berezovsky had an essential role in this process, and the reason why his participation was indispensable, was the exercise of his political influence to ensure:

        a) that those businesses were transferred to a separate joint stock company (ultimately Sibneft); and subsequently

        b) that Sibneft was partially privatised and included in the loans-for-shares programme.

iii) It was also common ground that it was agreed that management control over Sibneft, once acquired, would be exercised by Mr. Abramovich and his team, and not by Mr. Berezovsky or Mr. Patarkatsishvili.

137. But it was not common ground that there was any legally binding agreement between the parties; that the "precise terms of the relationship were finalised" shortly before August 1995; nor were the parties agreed as to the extent of Mr. Berezovsky's role in assisting with the securing of finance for the acquisition of Sibneft shares.

138. The critical dispute between the parties in relation to the issue, was whether Mr. Berezovsky was going to be rewarded for his role in the creation and privatisation of Sibneft by receiving, jointly with Mr. Patarkatsishvili, a contractual entitlement to an ownership interest in Sibneft and a proportionate entitlement to its profits and/or the profits of Mr. Abramovich's trading companies generated as a result of the latter's acquisition of control of Sibneft (as Mr. Berezovsky contended); or whether he and Mr. Patarkatsishvili were going to be rewarded by payments on demand for their *krysha* or patronage services (as Mr. Abramovich contended). As Mr. Sumption bluntly put the matter, was Mr. Berezovsky trading his undoubted political influence at the Kremlin and elsewhere, and his contacts with senior bankers and businessmen, in return for straight cash, or was his reward to be an entitlement to a share in the ownership of Sibneft, and the profits generated as a result of Mr. Abramovich's acquisition of control?

Executive summary of my conclusion on Issue A1

139. My conclusion on this issue is that there was no such agreement of the nature and in the terms alleged by Mr. Berezovsky in paragraphs C33-C34 of the Re-re-re-Amended Particulars of Claim and paragraphs 97-105 of Mr. Berezovsky's fourth witness statement, nor as subsequently developed in his case at trial. Nor was any agreement reached in 1996 between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in the terms alleged in paragraph C37 of the Re-re-re-Amended Particulars of Claim.

140. Thus I find that:

i) there was no agreement that Mr. Berezovsky (or Mr. Berezovsky and Mr. Patarkatsishvili) would be rewarded for his (or their) role in the creation and privatisation of Sibneft by receiving an interest in Sibneft shares, or an entitlement to require the transfer of Sibneft shares;

ii) there was no agreement that he or they would be rewarded by an entitlement to receive payment of 50% (or some other proportionate entitlement) of Sibneft profits and/or those generated by Mr. Abramovich's trading companies as a result of his acquisition of control of, or involvement with, Sibneft, to be held jointly with Mr. Patarkatsishvili.

iii) On the contrary, the evidence established that the arrangement between the parties was that Mr. Abramovich would provide payments towards Mr. Berezovsky's (and subsequently Mr. Patarkatsishvili's) expenses, not only in connection with ORT, but also generally, in exchange for Mr. Berezovsky's assistance, protection or *krysha,* and subsequently that of Mr. Patarkatsishvili.

The actual amounts to be paid were agreed each year as between Mr. Abramovich and Mr. Patarkatsishvili as a result of a process of negotiation.

141. Whilst it may have been the case that:

i) the figure which Mr. Berezovsky and Mr. Patarkatsishvili demanded, the figure which they expected Mr. Abramovich to pay under their protection type relationship, and the figure which Mr. Abramovich agreed to pay, was informed by, or related to, how much Mr. Abramovich's trading companies and/or Sibneft were actually earning; and

ii) the expectation of Mr. Berezovsky and Mr. Patarkatsishvili was that the more Mr. Abramovich's trading companies and/or Sibneft were earning, the greater would be the payments that Mr. Abramovich would have to make to retain protection and discharge his *krysha* obligations;

so that, in that loose sense, the payments were "referable" to the profits generated by Mr. Abramovich's trading companies and/or Sibneft, I conclude that there was no agreement, as asserted by Mr. Berezovsky, that he and Mr. Patarkatsishvili would be *entitled* to a proportionate interest in such profits, whether as a result of a share ownership interest or otherwise.

142. The arrangement was one which, by its very nature, might have caused Mr. Berezovsky and Mr. Patarkatsishvili to have regarded themselves, in the vernacular, as having, or being entitled to "a piece of the Sibneft action". That, in a very loose sense, was the nature of the deal with Mr. Abramovich, and the nature of many payments under so-called patronage or "protection" arrangements. But that does not translate into the complicated contractual agreement for which Mr. Berezovsky contended.

143. Having rejected Mr. Berezovsky's case, I do not need to decide what the precise terms of the arrangement between the three men were. Whilst I conclude that it was – at least - in general terms of the nature asserted by Mr. Abramovich in paragraphs D.32 of the Re-re-Amended Defence, paragraphs 55-58 of his third witness statement and his oral evidence, I suspect, given what I can only describe as the obscure nature of the relationship, first: that the "requirements" made of Mr. Abramovich, or, put another way, his *krysha* type obligations, changed over time; and second, that there were other aspects of the business arrangements between the three men which have not been referred to in evidence in this trial. I am not convinced that the court has been presented with the full picture of the business arrangements between the three men. But that is irrelevant. What I have to decide is whether Mr. Berezovsky has proved, on the balance of probabilities, his case in relation to the alleged 1995 and 1996 Agreements. He has not done so.

144. I found Mr. Berezovsky's evidence (and that of his witnesses) in relation to this issue to be vague, internally inconsistent, exaggerated and, at times, incredible. Whilst there were defects in certain aspects of Mr. Abramovich's evidence (and that of his witnesses), I found it, on the whole, to be more reliable and easier to square with the inherent probabilities of the business relationship between the two men and the circumstantial evidence.

145. My conclusions are based not only on the direct evidence given by each man as to the arrangements between them, but also on the circumstantial evidence.

146. The following paragraphs of this section summarise the respective pleaded cases, the salient direct evidence in relation to this issue, the indirect circumstantial evidence relating to the issue and my relevant findings of fact and conclusions. Necessarily not all evidential issues are addressed.

Mr. Berezovsky's pleaded case about the making of the alleged 1995 Agreement

147. In the final version of his pleaded case Mr. Berezovsky alleged as follows in relation to the alleged 1995 Agreement[45]:

> "C32 Sibneft was created by Decree Number 872 ("**the August 1995 Decree**") of the President of the Russian Federation, dated August 24 1995, as part of a programme of privatisation. It represented a combination of the previous interests of the Russian state of the Omsk oil refinery, Noyabrskneftegaz, and oil and gas producing company, Noyabrskneftegazgeofizica, an oil exploration company and Omsknefteprodukt, a marketing company.
>
> C33. Prior to the August 1995 decree Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich agreed orally to acquire a controlling interest in Sibneft on its creation. In the period leading up to the August 1995 decree, Mr. Abramovich was principally concerned with the identification of the appropriate corporate components which were then combined to form Sibneft; and Mr. Berezovsky was principally concerned with discussing the possible privatisation with President Yeltsin and his administration and with raising the finance required.
>
> C34. In that period the three also agreed orally ("the 1995 Agreement") that:
>
> (1) the ownership interest they would acquire in Sibneft would be held for their benefit as follows: 50% for the benefit of Mr. Abramovich; and 50% for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili;
>
> (2) profits would be split in the same percentages;
>
> (3) any future business interests they acquired, whether or not related to Sibneft, would be

[45] See Re-re-re-Amended Particulars of Claim dated 5 October 2011: I have not included the previous wordings.

shared between them in the following proportions: 50% would be owned by Mr. Abramovich; and 50% by Mr. Berezovsky and Mr. Patarkatsishvili.

C34A …

C34B Pursuant to the Russian law rights which arose by virtue of the 1995 Agreement Mr. Berezovsky and Mr. Patarkatsishvili (1) had the right to demand from Mr. Abramovich a distribution of the acquired ownership interest in Sibneft in the agreed proportion; (2) would acquire rights of co-owners in respect of any property directly acquired by Mr. Abramovich as a result of the 1995 Agreement; and (3) had the right to demand distribution of profits resulting from the joint activity in the agreed proportion".

Mr. Berezovsky's pleaded case about the making of the alleged 1996 Agreement

148. In the final version of his pleaded case Mr. Berezovsky alleged as follows in relation to the alleged 1996 Agreement[46]:

"C36 Initially, Mr. Berezovsky and Mr. Patarkatsishvili legally owned or controlled AKB Obedinyonniy Bank which controlled and legally owned 50% of NFK, which acquired the rights in Sibneft set out in paragraph C35 above. However, as Mr. Berezovsky became more heavily involved in politics, and while Mr. Patarkatsishvili continued to manage the largest and politically the most influential TV channel, ORT, it was decided and agreed between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich that Mr. Berezovsky and Mr. Patarkatsishvili would be distanced from the Sibneft business. Mr. Abramovich proposed that he, or his companies, should own all of the Sibneft shares.

C37 It was orally agreed by the three in 1996 ('the 1996 Agreement') that:

(1) Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would arrange matters so that Mr. Abramovich, or his companies, was the legal owner of all the Sibneft shares which had been acquired prior to the 1995 Agreement;

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[46] See Re-re-re-Amended Particulars of Claim: I have deleted the previous wordings.

(2) Mr. Berezovsky and Mr. Patarkatsishvili would continue to have the rights and interests which they had acquired pursuant to the 1995 Agreement in the shares that would be held by Mr. Abramovich;

(3) Mr. Abramovich would, upon request, transfer to Mr. Berezovsky and/or Mr. Patarkatsishvili shares equivalent to their interest in Sibneft on the basis of the percentage split referred to above;

(4) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to dividends and any other payments made by Sibneft to its owners on the basis of the percentage split referred to above;

(5) thereafter and further acquisitions of Sibneft shares would be held on the same basis.

C37A The 1996 Agreement is governed by Russian law; and took effect under Russian law as a binding 'sui generis' agreement between the parties.

C38 By about August 1997, the 1996 Agreement had been implemented and Mr. Abramovich or his companies was the legal owner of all, or substantially all, of the Sibneft shares which had been acquired pursuant to the terms of the 1995 and/or 1996 Agreements, with Mr. Berezovsky and Mr. Patarkatsishvili having that shareholding in the agreed proportions pursuant to the terms of the 1995 and/or 1996 Agreements."

149. There was no written document recording the terms of either the alleged 1995 Agreement or the alleged 1996 Agreement. I address below the documentary materials which Mr. Berezovsky alleged supported their existence in the terms alleged by him.

Mr. Berezovsky's evidence about the making of the alleged 1995 Agreement

150. Mr. Berezovsky's evidence about the making of the alleged 1995 Agreement was set out in his 4th witness statement (his principal witness statement for trial, dated 31 May 2011). In his 2nd witness statement dated 17 July 2009 (his principal witness statement served in the course of the summary judgment proceedings, where he had also described the making of the alleged 1995 Agreement in similar detail) Mr. Berezovsky had said that:

> "Although all of the commercial relationships and agreements described above were oral and none of them was recorded in writing, I have a clear recollection of what was agreed."

This sentence was not included in the equivalent passage in his 4th witness statement. In his oral evidence, Mr. Berezovsky said:

> "I don't remember the details; it's a long, long time ago".

Sibneft was not, he said, the "… number one priority". But I found there to have been a marked difference between the detail which he was apparently able to remember in the course of drafting his two witness statements and that which he was able to recall at trial.

151. The evidence which Mr. Berezovsky gave describing the making of the alleged 1995 Agreement can be summarised as follows. From early 1995, "… it was accepted …" that he, Mr. Patarkatsishvili and Mr. Abramovich:

> "… would work together as partners to acquire the company [that became Sibneft] and would then be partners in the company once we acquired it. The three of us discussed this on many different occasions between January and August 1995, mainly at the LogoVAZ club[47]."

152. Mr. Berezovsky then said that at some stage between then and August 1995, a more detailed distribution of functions was agreed. In paragraph 96 of his 4th witness statement he said:

> "96. Many different aspects of what was a complex project were discussed. Due to the passage of time, and the large number of meetings and discussions that we had, agreement developed through the first half of 1995, and the gist of the terms which were finalised between us."

These included terms that Mr. Berezovsky would be responsible for lobbying the government to include the assets in the loans-for-shares programme; Mr. Berezovsky and Mr. Patarkatsishvili would raise funds for the project; Mr. Patarkatsishvili would lead commercial negotiations with key business counterparties; and Mr. Abramovich would co-ordinate his contacts in the oil sector and with the senior management of the companies involved in the project and, if the project succeeded, would recruit the managing staff and run the new company[48].

The alleged partnership allegation

153. According to Mr. Berezovsky, the "exact shares" of the three parties were agreed only shortly before the Sibneft decree in July or August 1995: "50:50 between [Mr. Patarkatsishvili] and me on the one side and Mr. Abramovich on the other". In his 4th witness statement he said:

> "99. It was also discussed and agreed early on that we would all be partners in the project and in the oil

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47 Berezovsky 4th witness statement witness statement, paragraph 95.

48 Berezovsky 4th witness statement, paragraph 97; Berezovsky Day 4, pages 150-153; Day 4, pages 167-176.

> company if we acquired one. However, the exact shares which we would each have in the project were not agreed until later on, closer to the time of the decree, in July or August 1995.
>
> 100. In the last few weeks before the Sibneft decree, when it became clear that President Yeltsin would be issuing it, Badri proposed that the future company should be owned in equal shares, two thirds for him and me jointly and one third for Mr. Abramovich. I proposed that the ownership should be split 50:50 between Badri and me on the one side and Mr. Abramovich on the other. My reasoning was that Mr. Abramovich would be in charge of the management of the company. I knew that Mr. Abramovich might offer some of the benefits of his ownership of the company to his associates such as Eugene Shvidler. I made this decision on the same principle as I had proposed to share with Badri, 50:50."

But in his oral evidence, Mr. Berezovsky was not able to explain with any clarity what had been agreed as to how, in practice, his and Mr. Patarkatsishvili's 50% was to be held, or indeed in what entity they were to have an interest of 50%, or what the nature of that interest was going to be. The vagueness of his evidence on this point did not give any confidence as to the veracity of his case.

154. As I describe in greater detail below, it was common ground that at some stage it was agreed that companies respectively controlled by Mr. Abramovich on the one hand and Mr. Berezovsky/Mr. Patarkatsishvili on the other would respectively have a 50% share in the vehicle company which was to be used to acquire management control of Sibneft through an auction process, referred to as the "loans-for-shares" scheme. This process involved a loan to the State (effectively by the pledgee), a pledge by the State of 51% of the share capital of Sibneft as security for the loan, and the possibility of default by the State, when the shares would be sold by the pledgee and available for purchase by the highest bidder.

155. However, it was far from clear from Mr. Berezovsky's evidence what his case actually was as to the interest which he was going to have in the 49% of the share capital of Sibneft which was designated for ultimate privatisation, or the 51%, that might be sold in the event of a default, by the State, on the loan. He suggested first that "it was not agreed that I will be a registered shareholder of the company"[49]; then that "it's absolute clear agreed that we are shareholder, all of us, of the company[50]"; and, finally, that in 1995 there was no discussion at all about whether or not they would be registered shareholders so that Mr. Berezovsky might, or might not, have been a registered shareholder[51]. It was ultimately his evidence that there had been no agreement at all about what would happen when the shares became available for purchase, other than that it would be:

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49 Berezovsky Day 4, page 157.
50 Berezovsky Day 4, page 158.
51 Berezovsky Day 4, page 159.

> "… up to Roman how will he organise that. … It's just -- it was very unusual that from the beginning I trust Roman so much that I gave him 50 per cent of the company[52]";

and that it was up to Mr. Abramovich completely to decide how the company would be "structurised" and when they would become shareholders[53].

156. When challenged that there was no agreement in 1995 that Mr. Abramovich would hold any Sibneft shares for Mr. Berezovsky and Mr. Patarkatsishvili, Mr. Berezovsky said:

> "It was not agreement, you're absolutely correct. But agreement was that he organise everything and I did not care... which turned out that later on, when we start to buy 49 per cent step by step, it turned out that mainly Abramovich company own that shares. Because, as you understand, 51 per cent still was in management control. And only later on I decide, according to Abramovich again request, because of my dangerous political exposure, to give up to him to hold that[54]."

The alleged share of "the profits"

157. At the same time, according to Mr. Berezovsky, it was agreed that the parties would have corresponding 50:50 shares of "the profits". Contrary to Mr. Rabinowitz's submission[55], it was not clear which profits Mr. Berezovsky alleged that the parties had orally agreed that they were to share under the terms of the alleged 1995 Agreement. Paragraph C34 of the Re-re-re-Amended Particulars of Claim (quoted above) referred solely to Sibneft's profits. Paragraph C37(4) (also quoted above) asserted that in 1996:

> "… Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to <u>dividends and any other payments made by Sibneft</u> to its owners on the basis of the percentage split referred to above." [Emphasis supplied]

158. Paragraph C34B of the Re-re-re-Amended Particulars of Claim (also quoted above) appeared to go further and alleged that, pursuant to the Russian law rights which arose by virtue of the alleged 1995 Agreement, but <u>not</u> as a result of any express oral agreement

> "Mr. Berezovsky and Mr. Patarkatsishvili …
>
> (2) would acquire rights of co-owners in respect of any property directly acquired by Mr. Abramovich as a result of the 1995 Agreement; and

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52 Berezovsky Day 4, page 161.
53 Berezovsky Day 4, pages 163-164.
54 Berezovsky Day 4, page 165.
55 See, for example, Berezovsky First Schedule pages 3-4 and Mr. Rabinowitz's oral closing submissions.

(3) had the right to demand distribution of profits resulting from the joint activity in the agreed proportion."

159. In his fourth witness statement, Mr. Berezovsky said that he was entitled to a share of profits "in respect of our share of Sibneft"[56]. In his oral evidence, however, Mr. Berezovsky, asserted (effectively, subject to the allegation in paragraph C34B, for the first time) that the express oral agreement was that he and Mr. Patarkatsishvili were to share with Mr. Abramovich, not just in Sibneft's profits, but also in some undefined further profit pool. Thus he said: "we invest together through our dividends or through our profit generated everything connected to Sibneft"; and that he would be entitled to "whatever we will generate by the new company"; "in different ways, through the other companies but connected to the resources which Sibneft has" in the same proportions as his alleged interest in Sibneft; or to the "shared profit of Sibneft everything which lead to Sibneft generation"; or to "any profit which initially generate by Sibneft, which base of the profit is Sibneft"[57].

160. By the time of closing submissions this was formulated as an allegation that the express oral agreement between the parties was that he and Mr. Patarkatsishvili were entitled to a 50% profit share, not only in Sibneft's profits, but also in profits generated indirectly through Mr. Abramovich's trading companies[58] as a result of his acquisition of control of, or involvement with, Sibneft.

161. For reasons which I elaborate below, I conclude that it was highly unlikely that Mr. Abramovich would have agreed, in contractually binding terms, to have paid a defined percentage of such a vague proportion of his trading companies' profits to Mr. Berezovsky.

Alleged terms in relation to future business

162. Another difficulty in Mr. Berezovsky's oral evidence related to the terms of the express oral agreement, as pleaded in paragraph C34(3) of the Re-re-re-Amended Particulars of Claim, in relation to 50:50 participation in "… any future business interests they acquired, whether or not related to Sibneft".

163. However, unlike the pleaded allegation contained in paragraph C34(3), neither Mr. Berezovsky's witness statements nor his oral evidence suggested that this amounted to an automatic right of participation in other business ventures. In cross-examination, Mr. Berezovsky initially confirmed that the pleaded account was correct[59]. However, when presented with the version of the alleged agreement as set out in his fourth witness statement, he then resiled from that proposition and said that what was agreed was a "… right of first refusal to take part in the venture on the same 50:50 basis on which we were partners in Sibneft"[60].

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56 Berezovsky 4th witness statement, paragraph 169.

57 Berezovsky Day 4, pages 153 and 154; Day 5, pages 108 and 117; Day 6, pages 16, 29 and 122.

58 Defined below.

59 Day 6, page 117-118.

60 Berezovsky 4th witness statement, paragraph 104; Berezovsky Day 6, page 118: "As far as Abramovich is concerned, it's absolutely correct that it was a right of first refusal". See also Berezovsky Day 6, pages 120-121.

164. I conclude that it was wholly implausible that either Mr. Berezovsky or Mr. Abramovich would have agreed to such a term in the circumstances prevailing in 1995. In 1995, according to his own evidence, Mr. Berezovsky was an established business man with considerable influence in the Kremlin. He had known Mr. Abramovich for only a few months, had not yet participated with him in any business venture, and in any event regarded Mr. Abramovich as a small-time oil trader with no business track record. His case was that he allowed Mr. Abramovich a 50% stake in Sibneft in order to incentivise him as its manager. But on the basis of this term as to future business, he was giving Mr. Abramovich the right to take a stake in any of Mr. Berezovsky's and Mr. Patarkatsishvili's future ventures, even if Mr. Abramovich was not managing such a venture. Likewise, I find it equally incredible, that Mr. Abramovich would have contractually bound himself to allow Mr. Berezovsky to take a participation in any future business venture that he might choose to engage in.

The alleged term in relation to restrictions on sale of Sibneft shares

165. Mr. Berezovsky also alleged for the first time in his fourth witness statement:

> "We agreed that none of us could sell our shares in what was to become Sibneft without the agreement of the others[61]."

166. But this allegation was never pleaded. Mr. Berezovsky appeared to suggest that the reason why this term of the alleged agreement had not been pleaded (despite the many amendments to his statement of case) was because he had not been asked any questions about it by his lawyers[62]. However, he insisted that he had checked his pleaded case: "It's absolutely correct, I checked the pleaded statement as well because I put my signature"[63]; but then said that he had checked it "not attentively" [64]. Again, this did not inspire confidence in the veracity of the allegation.

167. Again, in the circumstances of 1995, I find it incredible that either Mr. Berezovsky or Mr. Abramovich would have agreed to such a term. I cannot see why either of them would have wished to have locked themselves in to an eternal partnership as shareholders in Sibneft, only dissolvable by common consent. No commercial rationale was suggested for such a term. The only inference which I draw is that the allegation of such a term was consistent with Mr. Berezovsky's case in relation to RusAl.

Mr. Berezovsky's evidence about the making of the alleged 1996 Agreement

168. In his written evidence, Mr. Berezovsky said that no attention had been given in 1995 to the manner in which shares of Sibneft would be held. He said:

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61 Berezovsky 4th witness statement, paragraph 105.
62 Day 6, pages 27-28.
63 Day 6, page 28.
64 Day 6, page 28.

> "… under the 1995 Agreement there had been no focus on which structures controlled by which of us would be used to acquire interests in Sibneft"[65].

Thus, he contended that it was under the terms of the alleged 1996 Agreement that the three men agreed the manner in which the Sibneft shares were to be held. According to Mr. Berezovsky, immediately after the Davos forum of February 1996, Mr. Abramovich told him and Mr. Patarkatsishvili that he was uncomfortable with Mr. Berezovsky's active involvement in Russian politics, and that Mr. Berezovsky's high political profile was liable to have an adverse effect on Sibneft's interests. Mr. Berezovsky said[66]:

> "165 Immediately after the Davos forum, Mr. Abramovich told Badri and me that he was uncomfortable with my active involvement in Russian politics. He said that he was concerned by the stance I had taken against powerful political factions, particularly the Communists, who were building strong public support in anticipation of forthcoming elections and who had re-nationalisation of key industries, including oil, firmly on their political agenda. Although my relationship with President Yeltsin had been key to creating the opportunity for us to acquire Sibneft, Mr. Abramovich considered that my political profile had the potential to have a detrimental effect on Sibneft's interests. I acknowledged these concerns as having a reasonable basis and took very seriously Mr. Abramovich's request that I should not publicly put myself forward as owner of Sibneft.
>
> 166 During a series of conversations which took place at the LogoVAZ club and at my home in Alexandrovka between March and June 1996 (that is, after the Davos forum and before the first round of voting in the presidential elections), Mr. Abramovich said that he felt very strongly that I should distance myself from the business because I was so involved politically. He also suggested that Badri should distance himself from Sibneft because he was heavily involved with the management of ORT which was to play a decisive role in the elections, was closely associated with me and was well known to be my partner. Although under the 1995 Agreement there had been no focus on which structures controlled by which of us would be used to acquire interests in Sibneft, Mr. Abramovich proposed that from now on he, or his companies, should own all of the Sibneft shares. Badri and Mr. Abramovich's

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65 Berezovsky 4th witness statement, paragraph 166.

66 Berezovsky 4th witness statement, paragraphs 165 and 166.

> associate, Mr. Shvidler, were present during some of these discussions."

169. Mr. Berezovsky alleged that it was therefore agreed in the course of a series of conversations between March and June 1996 that he and Mr. Patarkatsishvili would be "distanced" from Sibneft because of the prospect of a Communist victory in the 1996 elections[67].

170. Mr. Berezovsky's case as presented at trial was that it was agreed that Mr. Abramovich would hold his and Mr. Patarkatsishvili's interest for them, and that he would "… continue to pay us the share of profits we would otherwise have received in respect of our share of Sibneft".

171. He said[68]:

> "169. As part of our agreeing to what he was suggesting, Mr. Abramovich told us that he would continue to pay us the share of profits we would otherwise have received in respect of our share of Sibneft and that he would, upon request, transfer to us shares in Sibneft equivalent to our 50% interest. He said again to us that we could trust him and I recall him saying to me: "Boris, you understand that I will look after your interest. My interests are your interests, your interests are my interests". He used the Russian word "интересы", or "interesy" which means 'interests'. I also distinctly recall him using the Russian word "benefitsiary" and stating that Badri and I would be the "benefitsiary" of the shares."

Mr. Abramovich's pleaded case about the making of the alleged 1995 Agreement

172. In his Defence, Mr. Abramovich denied Mr. Berezovsky's case in relation to the alleged 1995 Agreement in the following terms:

> "D32. Paragraph C32 is admitted, save that the legislative measures involved in the creation of Sibneft were (i) Presidential Decree No. 872 of 24 August 1995 '*On the Establishment of the OAO Siberian Oil Company*' ('the August 1995 Decree') and (ii) Government Resolution No 972 of September 1995 '*On the Foundation of the Open Joint-Stock Company Siberian Oil Company*' ('the September 1995 Resolution'). Prior to the August 1995 Decree, the defendant informed Mr. Berezovsky that he wished to acquire a controlling interest in Sibneft on its creation. In return for the defendant agreeing to provide Mr. Berezovsky with funds he required in connection with the cash

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67 Berezovsky Day 6, page 7

68 Berezovsky 4th witness statement, paragraphs 169-170.

flow of ORT, Mr. Berezovsky agreed he would use his personal and political influence to support the project and assist in the passage of the necessary legislative steps leading to the creation of Sibneft which, in the event, were the obtaining of the August 1995 Decree and the September 1995 Resolution.

D33. Save that:

(a) as is set out in paragraph D32 above, Mr. Berezovsky had agreed to use his personal and political influence to support the project and assist in what proved to be the obtaining of the August 1995 Decree and the September 1995 Resolution and to that end the defendant assumes that Mr. Berezovsky did discuss the privatization with President Yeltsin and/or members of his administration;

(b) it is admitted that, in the period leading up to the August 1995 Decree and the September 1995 Resolution, the defendant was concerned with all other necessary arrangements leading to the creation of Sibneft, including arranging the necessary finances.

paragraph C33 is denied. The defendant did not agree with Mr. Berezovsky and/or Mr. Patarkatsishvili that they should jointly acquire a controlling interest in Sibneft.

D34. Save that it is admitted and averred that Russian law would govern any oral agreement reached between the parties in 1995, paragraphs C34, C34A and C34B are denied. There was no such agreement."

Mr. Abramovich's pleaded case about the making of the alleged 1996 Agreement

173. Mr. Abramovich denied that any such agreement as alleged by Mr. Berezovsky had been made in 1996, or that Mr. Berezovsky or Mr. Patarkatsishvili had or would have any interest in or rights in relation to Sibneft.

Mr. Abramovich's evidence about the making of the alleged 1995 Agreement

174. In his third witness statement he described his arrangements with Mr. Berezovsky as follows:

"53. I remember explaining to Mr. Berezovsky [on a Caribbean cruise] that I wanted to combine the Omsk Oil Refinery and Noyabrskneftegaz into a single company, whose management I would control. I

explained that there was the potential to make a lot of money by consolidating control over these companies and directing their sales through my Trading Companies. At that time, I thought it was necessary first of all to get management control of the new company and only once that was achieved to then start preparations for the auctions to acquire its shares. I am absolutely certain that at the time he and I did not discuss any 'loans-for-shares' programme, because I knew nothing about this at the time, since the idea for such programme itself arose only in the spring of 1995, which I describe below. Although I gathered from our conversation that Mr. Berezovsky knew little about the oil industry, he was clearly excited by the prospect of a business which had excellent potential for the creation of substantial and regular cash flows. For myself, I considered that once I got access to the flow of products and ·could introduce efficiency to the management, I would be able to improve my trading income and so be able afford to pay for protection services rendered to my business. I appreciated from the outset that if he were to provide me with any assistance in relation to the creation of the new company, Mr. Berezovsky would expect a substantial financial reward in return. This was not something I relished but I was realistic enough to know that without *krysha* my idea of creating a vertically integrated oil company would remain just an idea. We absolutely did not discuss either during the Caribbean cruise or subsequently the idea of Mr. Berezovsky owning half of the company. That frankly did not interest him since our discussion did not assume that the integrated company itself would produce profit, at least not in the short term, and he was only interested in cash flow. I was also certainly not offering to make Mr. Berezovsky a 50% owner in my Trading Companies since I had built my trading business without him. I recall that during the cruise Mr. Berezovsky flew to Moscow and then came back to the Caribbean and we continued our communication. He was then full of talk about OAO Obshestvennoye Rossiyskoe Televidennie ("ORT"), which owned the central Russian television channel, and the importance for him of being able to fund his ORT project. Mr. Berezovsky and I agreed to continue our discussions once we had returned to Moscow.

The Understanding with Mr. Berezovsky [as discussed in Moscow]

55. Having explained to Mr. Berezovsky my plan to bring Omsk Oil Refinery and Noyabrskneftegaz together and to direct their sales through my Trading Companies, I asked Mr. Berezovsky if he would be able to assist me with having necessary documents prepared and adopted for the formation of the new oil company. Mr. Berezovsky agreed to provide the so-called *krysha* in return for payments towards his substantial 'expenses'. We had a discussion about what these 'expenses' were likely to be. He explained that he required money to fund a company which he actually regarded as 'his' company, ORT. I was aware from our discussions that Mr. Berezovsky regarded it as a key tool for furthering his political ambitions. I understood from him that one of the conditions of his acquisition of ORT shares from the Russian Government was that he would secure financing for ORT. Some time after Mr. Berezovsky's purchase of shares, ORT's management had declared a temporary moratorium on advertising. Without the revenue from advertising, Mr. Berezovsky had an even stronger need for cash for ORT in particular.

56. I recall that Mr. Berezovsky indicated that he would require approximately US$30 million per year for ORT and his personal expenses. That number was discussed during our meetings at Aleksandrovka. I also remember that Mr. Berezovsky inquired how much I could make per year if my idea of creation of a vertically-integrated company succeeded. I understood the inquiry as addressing the total income I could generate from my Trading Companies since at the time that was my only source of income. I formed the impression that Mr. Berezovsky was making his own judgment about which of the many projects he was being offered at around that time would be worth agreeing to support. I knew he needed to be satisfied that I could pay his fee, particularly if the new business was not the success I had hoped. Accordingly, I informed him that I currently generated around US$40 million per year through my Trading Companies and that I expected to be able increase that to around US$100 million per year, assuming I could secure control of a new company comprising both the Omsk Oil Refinery and Noyabrskneftegaz. I am absolutely clear· that he did not fix his fee by reference to 50% of my anticipated trading income or otherwise make any reference to sharing profits. Rather, he told me the approximate fee and asked about my likely income the following year in order to see if I could afford him.

57. His proposed fee was already approximately my entire annual business earnings so I hoped that I would have to cover Mr. Berezovsky's expenses only after the new integrated company had been created and when I would be receiving additional revenue. However, already in March 1995, he demanded that I make the first payment, which I assumed at the time was his way of both indicating that our *krysha* relationship had started and also letting me know where the balance of power lay. It was clear to me that he wanted to receive money from me up front, before actually providing any service.

58. Nothing about our arrangement was written down and there was no specific agreement over which of the Trading Companies would provide funds for the payments or for how long the arrangement would last. Nor did we have an agreement as to what particular amounts would have to be paid other than for the first year, and I assumed that this would depend each year on the nature of services to be provided during particular time periods and what the expenses of Mr. Berezovsky and ORT would be. Mr. Berezovsky showed no interest in the Trading Companies or their names, never required me to furnish him with accounts or financial statements for the Trading Companies, and we did not consider formalising what we discussed. Our agreement was a practical arrangement where each party had to prove his worth as events developed and the participants would be bound by mutual understanding; moreover, breaking such an understanding would not only end the relationship but entail certain negative repercussions as well. There were too many uncertainties at that time in Russia about what the future business and political climate would be. We certainly never discussed or agreed about plans to acquire jointly (in any proportions) the oil company. Moreover, there was no discussion about Sibneft cash flows ever becoming the source of funding for Mr. Berezovsky. Nor did we discuss then or afterwards forming a partnership for any such purpose, as I understand Mr. Berezovsky now alleges.

No discussions of share acquisition in any proportion

59. When I initially discussed my ideas for creating a vertically-integrated oil company with Mr. Berezovsky in late 1994 and early 1995, we did not talk about his obtaining title to the shares of the new company. When loans-for-shares auctions did come on the scene,

which I describe below, I realized that this was exactly the method of obtaining management control over the company without acquiring ownership of the shares.

60. As I have also said above, at that time ownership of companies was not regarded as important and what was typically sought was control over the flow of goods and cash, for which purpose in turn it was necessary to control management."

175. Mr. Abramovich's evidence about the understanding reached in 1995 can thus be summarised as follows:

i) Their understanding was substantially reached by early 1995, probably in February when the first payment to Mr. Berezovsky was made, but in any event by March[69].

ii) Mr. Abramovich appreciated from the outset of their discussions that:

"… if [Mr. Berezovsky] were to provide me with assistance in relation to the creation of the new company [i.e. Sibneft], Mr. Berezovsky would expect a substantial financial reward in return."

iii) However, according to Mr. Abramovich, Mr. Berezovsky was not interested in acquiring Sibneft shares, and their discussions were not concerned with share ownership entitlement. In his evidence he pointed out that he and Mr. Berezovsky arrived at their understanding at a time when the oil assets were under State ownership and the loans-for-shares scheme had not yet been proposed, let alone adopted. The possibility that the two Siberian businesses might be wholly or partly privatised was not mentioned at that stage. Mr. Berezovsky's interest was in obtaining immediate funds or "cash flow" from Mr. Abramovich to finance ORT. Mr. Abramovich observed that this interest in cash flows as opposed to share ownership was typical of Mr. Berezovsky's *modus operandi* and, indeed, of the way business was commonly done in Russia at that time. For his part, Mr. Abramovich said that he always envisaged that he might eventually acquire a controlling stake in the company. But his main interest at this stage was in the creation of Sibneft and in getting a substantial degree of management control over it within the state sector.

iv) In his oral evidence, Mr. Abramovich accepted that as the project developed, and it became clear that there would be a loans-for-shares auction for management control of 51% of Sibneft's share capital, and privatisation of the remaining 49%, he discussed with Mr. Berezovsky the acquisition of management control; he said that by October 1995 it was agreed that

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[69] Abramovich 3rd witness statement, paragraphs 53, 57-8. In his oral evidence, Mr. Abramovich suggested that "… the agreement was reached I believe in February 1995": Abramovich Day 16, page 116; Day 17, page 26. Ms. Goncharova's evidence was that the first payments were made in cash in about February: Day 27, page 52.

Mr. Berezovsky would help him in relation to the loans-for-shares auction[70]. In re-examination, in clarification of a somewhat confused[71] passage of evidence given in cross-examination[72], he said that there had been no discussion with Mr. Berezovsky that the latter would help him in connection with the auctions whereby the 49% holding was sold off.

v) Mr. Abramovich's evidence was that Mr. Berezovsky agreed to provide his protection, or *krysha* in return for payments; Mr. Abramovich's immediate need was for political *krysha*, but he was happy to have physical *krysha* also[73], which the people around Mr. Berezovsky, including Mr. Patarkatsishvili, were in a position to provide; but the latter was not something which Mr. Abramovich discussed with Mr. Berezovsky[74]. Mr. Abramovich said:

> "Indeed *krysha* was required. It was impossible to keep hold of the company without *krysha*. So we required both political and physical *krysha* protection"[75].

vi) Mr. Abramovich's evidence was to the effect that, in the most basic terms, in return for his protection, Mr. Berezovsky was to get money[76]: i.e. payments towards his substantial "expenses"[77]. The expenses which Mr. Abramovich originally envisaged he would be required to pay consisted mainly in substantial contributions to the cost of funding ORT[78]. Mr. Berezovsky initially suggested that he would require about $30 million per year[79]. Mr. Berezovsky was not interested in how Mr. Abramovich's trading companies would perform; he was only interested in whether Mr. Abramovich could pay $30 million: "He was interested in the cashflows that I was able to provide"[80]; subsequently, as Mr. Abramovich's wealth increased, the amounts demanded by Mr. Berezovsky also grew, and (as was common ground) Mr. Abramovich funded a wide variety of personal and other expenses on Mr. Berezovsky's behalf.

vii) Mr. Abramovich's evidence was that his understanding was with Mr. Berezovsky only, although he appreciated that Mr. Patarkatsishvili was a close associate of Mr. Berezovsky. Mr. Abramovich's evidence was that:

> "I did not know, however, any details about their relationship, It was not something they discussed with me".

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70 Abramovich Day 24, page 19-20.

71 The confusion arose largely because of translation difficulties.

72 Abramovich Day 17, pages 21-26.

73 Abramovich Day 17, page 63; Day 17, page 65.

74 Abramovich Day 17, pages 70-71.

75 Abramovich Day 24, page 23. Mr. Abramovich said "Everything I've described in Russian is called '*krysha*'. If you translate this as 'lobbying', okay, but in Russian this is called '*krysha*'. When a person is ensuring protection, it doesn't matter what protection, and you are paying for that: this is the essence of the relationship": Abramovich Day 17, pages 69-70.

76 Abramovich Day 17, page 12.

77 Abramovich Day 17, pages 25-26.

78 Abramovich 3rd witness statement, paragraph 55.

79 Abramovich 3rd witness statement, paragraph 56 ; Abramovich Day 17, page 12.

80 Abramovich Day 17, page 51.

In his oral evidence Mr. Abramovich explained that while he was probably aware that Mr. Berezovsky and Mr. Patarkatsishvili had joint commercial interests in 2001, he was not aware of that from 1995-2001.

viii) Mr. Abramovich denied that there was any agreement that Mr. Berezovsky or Mr. Patarkatsishvili would become shareholders in Sibneft or be entitled to receive any particular proportion of its profits or profits generated indirectly through Mr. Abramovich's trading companies as a result of his control of, or involvement with, Sibneft; nor, he said, was there any partnership (in the legal sense) or agreement to share future business opportunities between them[81].

ix) His account was supported by Mr. Shvidler, with whom Mr. Abramovich discussed his conversations with Mr. Berezovsky at the time.

Mr. Abramovich's evidence about the making of the alleged 1996 Agreement

176. Both Mr. Abramovich and Mr. Shvidler disputed that any such discussions took place or that any such agreement was made[82].

The circumstantial evidence alleged by each side to support their case

177. Mr. Rabinowitz submitted that there were a number of critical aspects of the circumstantial evidence which strongly supported Mr. Berezovsky's account of the nature and terms of the alleged 1995 and 1996 Agreements, and which demonstrated that Mr. Abramovich's case was untrue. In headline terms, these were as follows:

i) the transcript of a meeting which took place at Le Bourget airport between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili on 6 December 2000 ("the Le Bourget transcript");

ii) handwritten notes alleged by Mr. Berezovsky to have been prepared by Stephen Curtis, a London solicitor, who died on 3 March 2004, recording what is said to have taken place at a meeting at Mr. Patarkatsishvili's beach house at Batumi, Georgia, on 25 August 2003 attended by, among others, Mr. Patarkatsishvili, Mr. Curtis, Mr. Fomichev and Mr. Tenenbaum ("the Curtis notes");

iii) the nature of the relationship between Mr. Abramovich and Mr. Berezovsky; in particular, Mr. Abramovich's case could not be squared with the dramatic end of the two men's friendship in 2000 and 2001;

iv) the fact that the work done by Mr. Berezovsky and Mr. Patarkatsishvili in 1995 went well beyond the provision of mere political lobbying or protection (*krysha*) as alleged by Mr. Abramovich;

v) the beliefs of Mr. Berezovsky and Mr. Patarkatsishvili and the beliefs of a large number of other people who believed, based on their contemporaneous

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81 Abramovich 3rd witness statement, paragraphs 44-45; Abramovich 4th witness statement, paragraphs 32-36. In his oral evidence Mr. Abramovich said that the 1995 arrangement was "limited only to Sibneft and to the money that we had discussed": Abramovich Day 16, page 118.

82 Abramovich 3rd witness statement, paragraphs 111-117; Shvidler 3rd witness statement, paragraph 88.

involvement with the parties, that Mr. Berezovsky and Mr. Patarkatsishvili did indeed have an interest in Sibneft;

vi) the nature and amount of the payments made by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili; these, submitted Mr. Rabinowitz, were:

a) calculated by reference to, and correlated with, Sibneft's profits and profits generated through Mr. Abramovich's trading companies as a result of his control of, or involvement with Sibneft; and

b) given the amount of the $1.3 billion payment made to Mr. Berezovsky and Mr. Patarkatsishvili in July 2002, and the $585 million paid to Mr. Patarkatsishvili in 2004;

and were wholly inconsistent with Mr. Abramovich's case;

vii) the nature and inconsistency of Mr. Abramovich's *krysha* allegation.

178. Mr. Sumption, on the other hand, submitted that Mr. Abramovich's account of the alleged 1995 Agreement was more likely to be correct for the following principal reasons:

i) the timing was more consistent with Mr. Abramovich's version than any other;

ii) so too was the absence of any written record;

iii) an interest in Sibneft, with a corresponding future profit share, would not have served Mr. Berezovsky's purposes in 1995; only cash payments for his *krysha* would have done that;

iv) no agreement was ever made about the manner in which Mr. Berezovsky's supposed interest in Sibneft would be held for him; the alleged 1996 Agreement, relied upon by Mr. Berezovsky for this purpose, was a fabrication;

v) the inherent vagueness and uncertainty of the agreement that Mr. Berezovsky alleges was made in 1995;

vi) the peripheral terms alleged to have been agreed, namely that each party would be entitled to participate in any future business venture of the others, and that none could sell out without the consent of the others, were inherently incredible in the circumstances of 1995;

vii) the parties did not behave between 1995 and 2000 as if they had made an agreement of the kind which Mr. Berezovsky alleges; in particular, Mr. Berezovsky's case that he was to have an interest in Sibneft and/or in Sibneft's profits and those generated indirectly through Mr. Abramovich's trading companies as a result of his control or involvement with Sibneft, was not consistent with:

a) the way in which Sibneft shares were acquired in 1996 and 1997, and held thereafter; or

b) the amount or timing of the payments made to him, nor with the manner in which they were arranged;

viii) until June 2001, Mr. Berezovsky's public statements were not consistent with his having had an interest in Sibneft; his private statements to friends and staff were equivocal.

179. To a certain extent, and not surprisingly, many of these points were the other side of the coin to those made by Mr. Rabinowitz.

Circumstantial evidence – the relevant topics

180. I analyse the circumstantial evidence alleged to support the respective cases of Mr. Berezovsky and Mr. Abramovich in relation to the Sibneft issues under the following, loosely chronological headings:

i) the initial relationship between Mr. Abramovich and Mr. Berezovsky;

ii) the conduct of the parties between 1995 and 2000: a) the creation of Sibneft; the acquisition of control of Sibneft; the privatisation and acquisition of Sibneft shares in 1996 and 1997; and the manner in which they were held; the contributions made by Mr. Berezovsky and Mr. Patarkatsishvili;

iii) the timing of the alleged 1995 Agreement;

iv) the absence of any written record;

v) Mr. Berezovsky's purposes in 1995;

vi) the alleged 1996 Agreement;

vii) The conduct of the parties between 1995 and 2000: b) whether any payments were made to Mr. Berezovsky and/or Mr. Patarkatsishvili prior to 1996;

viii) The conduct of the parties between 1995 and 2000: c) the nature of the payments made to Mr. Berezovsky and/or Mr. Patarkatsishvili between 1995 and 2000 and whether they were referable to 50% of:

a) Sibneft's profits; or

b) Sibneft's profits and profits generated indirectly through Mr. Abramovich's trading companies as a result of his acquisition of control of, or involvement with, Sibneft:

ix) the Le Bourget transcript;

x) Mr. Berezovsky's asserted belief as to his entitlement to an interest in Sibneft; his public and private statements about his connection with Sibneft; materials showing the belief of Mr. Patarkatsishvili and others in relation to Mr. Berezovsky's and Mr. Patarkatsishvili's entitlement to an interest in Sibneft;

xi) the payments of:

a) $1.3 billion in July 2002[83]; and

b) $585 million to Mr. Patarkatsishvili in 2004[84];

xii) the nature and inconsistency of Mr. Abramovich's *krysha* allegation.

181. As already mentioned, before coming to my conclusion in relation to this issue, I also took into consideration the evidence relating to the RusAl issues.

Analysis of the circumstantial evidence

i) The relationship between Mr. Berezovsky and Mr. Abramovich

182. Mr. Rabinowitz submitted that the relationship between Mr. Berezovsky and Mr. Abramovich strongly supported Mr. Berezovsky's case. He submitted that the evidence relating to their close relationship was very much more consistent with there having been a partnership between them, than it was the sort of relationship of protector and protectee suggested by Mr. Abramovich.

The Early Meetings

183. Mr. Berezovsky and Mr. Abramovich first met in December 1994 on a yachting holiday in the Caribbean, hosted by the Russian businessman and politician, Mr. Aven.

184. At this stage, Mr. Berezovsky, by then some 48 years old, already had a reputation as a man of great wealth with significant political connections and influence in Moscow, as I have already described above. The evidence showed that he was the classic power broker; he described himself as one of the most influential oligarchs in Russia. His influence derived, as Professor Fortescue stated, and as he himself confirmed in his evidence, primarily from his connections within the Kremlin but also from his ability to operate in conjunction with other oligarchs, and from the control which he was, in 1995, in the process of acquiring over the national television network in Russia, ORT, formerly owned by the State corporation, Ostankino.

185. I find as a fact that his main priority at this time was to find a method of funding ORT, so as to enable him to pursue his objective of assisting Mr. Yeltsin in the forthcoming election. The broadcasting business was known to be heavily loss-making. Mr. Berezovsky faced a funding shortfall despite drawing on LogoVAZ and other fellow investors. The lack of advertising revenue limited the prospect of financial recovery at least in the medium term. Mr. Berezovsky was therefore looking for another source of funding.

186. In his evidence, he said that, even before his first meeting with Mr. Abramovich, he had decided that one solution would be to acquire a big, cash-generating oil company. Dr. Nosova suggested in her written evidence that in November 1993 Mr. Berezovsky had visited various cities primarily for the purpose of promoting investments in

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83 I address this below, in relation to the Devonia Agreement.

84 I address this topic below, in relation to the Dorchester Hotel meeting.

AVVA. However, she claimed that Mr. Berezovsky also used this trip to explore investment opportunities in the oil sector, and, whilst he and the colleagues travelling with him were in Noyabrsk, Mr. Berezovsky organised a visit to the oil fields there, in order to meet Mr. Viktor Gorodilov, the President of Noyabrskneftegaz, for the purpose of having exploratory discussions about investing in Noyabrskneftegaz's business. Mr. Voloshin, however, said that the purpose of the trip to the city of Noyabrsk, as with the visits to the other cities, was to attract co-investors in AVVA, and they involved a series of promotional presentations to potential investors (private and corporate). Mr. Voloshin gave evidence in his witness statement to the effect that Mr. Berezovsky did not express any interest in oil investments during the period of this trip, or that if he did, he did not discuss such proposals with him. Nor did Mr. Voloshin have any recollection of hearing about a meeting with Mr. Viktor Gorodilov during this trip. Neither witness was cross-examined on the point however.

Mr. Abramovich's history prior to 1995

187. In late 1994, Mr. Abramovich was 28 years old. He had begun his career as a mechanic, but like many others (including Mr. Berezovsky) had gone into business in the late 1980s when private business was authorised in Russia for the first time in many years. He had studied part-time at the Moscow Road Engineering Institute for a period of four years from 1987 to 1991. Subsequently, after a one–year's "distance-learning" course, he had obtained a diploma in law in 2001.

188. His business career had begun in 1987, when he was employed as a mechanic in a construction office. At the time of Mr. Gorbachev's announcement of the start of "perestroika", allowing for the establishment of small businesses known as "cooperatives", he was one of the country's early entrepreneurs, serving from 1989 through 1991 as chairman of a cooperative which specialised in the manufacture of plastic toys for children. In 1991, he had begun to participate in the trading and transportation of oil, petroleum products, mineral fertilisers and cement. In the period from 1991 to 1996, he founded his first petroleum trading companies: Russian MPI A.V.K and AOZT Petroltrans ("Petroltrans") from 1991 to 1993, and then, in 1994, a Swiss company, Runicom SA ("Runicom SA"). He had two other petroleum products trading businesses as well as fuel oil and cement trading companies, the most important of which was BMP in Germany. Petroltrans, BMP and Runicom SA together became one of the largest petroleum trading networks in Russia, sourcing their products, from among other sources, from the government-owned Omsk Oil, in Western Siberia, as well as from refineries in Ukhta, Samara and Moscow. Petroltrans managed logistics, sales and distribution of petroleum products on the domestic market. According to Mr. Abramovich, and Mr. Shvidler, whose accounts I have no reason to disbelieve: from 1993 BMP was a leading exporter of fuel oil, petrol and diesel to markets in Romania and Moldova; the network of companies began by trading nearly 400,000 tonnes of petroleum product exports in 1993 and rapidly expanded to handle an annual volume of 3 - 3.5 million tonnes in the following year; in 1994, it also expanded its product line to include petrochemicals and aromatic hydrocarbons, which it exported to markets in Western Europe; the network was the top supplier of fuel to power stations and factories in Romania and Moldova; it was thus a natural progression to move into trading electricity, cement and aluminium produced in that region. At trial these trading companies were

referred to as Mr. Abramovich's "Trading Companies", regardless of whether they were domiciled in Russia or abroad. I shall likewise so refer to them hereafter.

189. At the time when he met Mr. Berezovsky, Mr. Abramovich was already a moderately successful businessman, but, as was common ground, he was little known by the extremely wealthy Russian businessmen in whose circle Mr. Berezovsky moved, and was without political influence. In his principal witness statement at trial, Mr. Berezovsky described Mr. Abramovich as "a small scale oil trader who had not achieved anything in business in late 1994". Mr. Berezovsky was equally scathing in his oral evidence about Mr. Abramovich's success at that time. He described Mr. Abramovich as not being "smart"[85] and said of him "He looks like not a person of first level, of first-level businessman at that time"[86]. He said that, when he met Mr. Abramovich on Mr. Aven's cruise, he, Mr. Berezovsky, had never heard of him[87]. He regarded Mr. Abramovich as a small-time oil trader with no significant track record in business. He accepted that he knew nothing about the size of Mr. Abramovich's business or the financial situation of his Trading Companies. According to Mr. Patarkatsishvili, when Mr. Berezovsky later introduced him to Mr. Abramovich he described him as a "nice boy who wanted to discuss commercial projects". That description underestimated Mr. Abramovich's business achievements at that date, and was also inconsistent with Mr. Berezovsky's own recognition, in an earlier witness statement, that Mr. Abramovich had given him "the impression of being a serious businessman" when they first met in 1994. It was also inconsistent with a description of Mr. Abramovich given by Pietro Marino, Mr. Berezovsky's then solicitor, as "an emerging and reasonably successful oil trader" in his first statement (the accuracy of which Mr. Berezovsky expressly confirmed). However, even after their first meeting, Mr. Berezovsky never, subsequently looked upon Mr. Abramovich as an equal to himself. At trial, Mr. Berezovsky spoke disparagingly of Mr. Abramovich's business talents.

190. One of the principal trading counterparties of Mr. Abramovich's oil trading group was Omsk Oil, which operated a large modern refinery at Omsk in Western Siberia. The refinery was supplied with crude oil by Noyabrskneftegaz, one of the largest producers in Russia. In the course of his trading operations, Mr. Abramovich had developed good relationships with both companies. Both were at the time in public ownership, and, in Mr. Abramovich's opinion, were not well managed. Mr. Abramovich's evidence was that, as a result of a meeting that he had attended in October 1994, he had conceived the idea of creating a new vertically integrated oil company combining both the production and the refining businesses. He believed that he could make more money if he could obtain management control of the combined entity and run it in conjunction with his existing oil trading network. To achieve the integration of Omsk refinery and Noyabrskneftegaz as a free-standing enterprise, and acquire management control over them, so as to create a new vertically integrated oil company, Mr. Abramovich needed access to someone who was in a position to influence the key decision-makers in government and to assist in securing the necessary legislation.

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85 Berezovsky Day 4, page 16.

86 Berezovsky Day 4, page 17.

87 Berezovsky Day 5, page 21.

191. It was suggested to Mr. Abramovich in cross-examination that the idea, or "vision" of integrating the two companies had originated with Mr. Victor Gorodilov, the general director of Noyabrskneftegaz, and not with him. Mr. Abramovich did not accept this. Precisely what proposal Mr. Victor Gorodilov may have conceived, or had in mind, or discussed with Mr. Abramovich, is irrelevant. What was clear from the evidence, as indeed Mr. Berezovsky accepted in both his written and oral evidence, was that it was Mr. Abramovich who brought the proposal of establishing a new vertically integrated oil company, through the merger of the two companies and their effective privatisation, to Mr. Berezovsky. In his witness statement Mr. Vladimir Voronoff, an associate and close friend of Mr. Berezovsky and Mr. Patarkatsishvili, claimed that Mr. Berezovsky regarded the creation of Sibneft as his "brainchild". Whilst Mr. Berezovsky may well have presented the creation of Sibneft as his own idea to others such as Mr. Voronoff, I am satisfied that, as between Mr. Berezovsky and Mr. Abramovich, the idea of creating Sibneft was brought to the table by Mr. Abramovich. Such a concept required knowledge of how the various oil enterprises operated and interacted. This Mr. Abramovich had acquired as a result of his dealings with those enterprises as an oil trader. It was clear that Mr. Berezovsky did not have such knowledge.

192. Mr. Abramovich and Mr. Berezovsky discussed the idea of combining the businesses of Omsk Oil and Noyabrskneftegaz on the cruise, and their discussions continued once they returned to Moscow. As I have already said, Mr. Berezovsky accepted that it was Mr. Abramovich who presented to him the idea of forming a viable vertically-integrated oil company by the creation of a company such as Sibneft.

193. Mr. Berezovsky, by his own account, saw the plan as "offering the opportunity for great wealth", which "would allow me to fund ORT and other media acquisitions". In his oral evidence, he acknowledged that the main reason why he became interested in the Sibneft project was that it would provide a source of funding for ORT[88].

The ongoing relationship between the two men

194. It was common ground that Mr. Berezovsky and Mr. Abramovich met each other frequently during this period, and indeed in the immediately following years, and formed a close relationship. As Mr. Abramovich admitted in his Defence, they became friends. In his third witness statement, he described their relationship as follows:

> "Mr. Berezovsky has said that there was a time when I was his trusted and close business colleague. With the benefit of hindsight, I hesitate to call him a former close 'friend', although I felt a strong emotional bond to him and I had previously respected him. For the reasons I explain below, our relationship may not qualify as friendship or regular business association. He did not regard me as an equal. Our relationship was a peculiarly Russian relationship typical for a particular time in Russia's post-communist history. The Russian word to describe the nature of his relationship with me is '*krysha* [roof]'. A person providing *krysha* to another was a

88 Berezovsky Day 4, page 34; Day 5, page 9.

person who acted as a protector. *Krysha* could take the form of political protection or physical protection. During the 1990's and 2000's, I needed both kinds of protection in order to ensure a sufficiently stable environment in which to build my businesses."

195. In his written closing submissions, Mr. Rabinowitz suggested that Mr. Abramovich had sought to deny that friendship, and had been "… obliged to retreat from that position" when faced with "… voluminous evidence of the friendship". I disagree. Mr. Abramovich's point was a more subtle one: with the benefit of hindsight he did not regard himself as a close friend. Whilst he did regard himself as a friend of Mr. Berezovsky between 1996 and the end of 1999 and early 2000, he was not a friend in 1995[89]:

> "A. …. Because I spent 1995 in his anteroom, in Mr. Berezovsky's anteroom, waiting for meetings to be arranged between me and him, so I would not really describe that as friendship.
>
> …
>
> A. In my witness statement what I'm saying is that looking from today, looking back from today, I would not describe what happened at that time as him being my close friend.
>
> Q. But at the time you did regard him as your close friend; is that right?
>
> A. I would just desist from using the term 'close', the qualifier 'close'. He was just a friend. In Russian, when you describe someone as your 'close friend', this has a very specific, focused meaning.
>
> …
>
> Q. The question for you, Mr. Abramovich, was what you meant by having a strong emotional bond with Mr. Berezovsky.
>
> A. What I meant was that we had a very good relationship, that we spent time together. We relaxed together, we spent time together, but I would not describe that as being a close friendship."

196. Mr. Abramovich went to say that his close friends were men such as Mr. Shvidler, Mr. Andrei Gorodilov and Mr. Tenenbaum, with whom he worked and relaxed; but that he would not describe Mr. Berezovsky as falling into that category.

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89 Abramovich Day 17, pages 84-85.

197. The evidence also showed that the two men's families went on holiday together about eight times in the four years between 1995 and 1998 (although with other families as well); that one year, Mr. Abramovich rented one of Mr. Berezovsky's properties at Cap d'Antibes; that in 1996-1997, Mr. Berezovsky and Mr. Abramovich were meeting each other on almost a daily basis; that Mr. Abramovich's then wife and Ms. Gorbunova were friends; and that Mr. Abramovich was invited to Mr. Berezovsky's birthday parties from 1996 up until and including 2000.

198. I do not consider that the evidence relating to the undoubted friendship between the two men and their families supports Mr. Berezovsky's case, even if, as Mr. Rabinowitz submitted, Mr. Abramovich attempted to underplay the closeness of that friendship. In 1995, at the start of their relationship, Mr. Abramovich was a moderately successful, 28 year old businessman, with resources, but not enormous resources, who clearly needed the political influence of a powerful and influential older politician such as Mr. Berezovsky. The evidence clearly showed that Mr. Berezovsky never regarded Mr. Abramovich as an intellectual or social equal, notwithstanding that their relationship developed into one of friendship. That was apparent, not only from the evidence relating to incidents such as the Dorchester Hotel meeting, but also from the disparaging terms in which Mr. Berezovsky spoke about Mr. Abramovich's brain and business achievements. It was clear, moreover, that the younger man, initially at least, looked up to and respected the elder man.

199. I conclude, therefore, that the nature of the two men's friendship did not support Mr. Berezovsky's case. The uneven balance of their personal relationship, which reflected Mr. Berezovsky's greater age and superior status, was, in my judgment, more consistent with Mr. Abramovich's case that their relationship was one of *krysha*.

ii) The conduct of the parties between 1995 and 2000

(a) the creation of Sibneft; the acquisition of control of Sibneft; the privatisation and acquisition of Sibneft shares in 1996 and 1997 and the manner in which they were held; the respective contributions made by Mr. Berezovsky and Mr. Patarkatsishvili and Mr. Abramovich

200. This next section of this judgment summarises the evidence relating to the creation of Sibneft, the loans-for-shares programme, and Sibneft's subsequent privatisation. In order to assess the probabilities as to whether there were indeed contractually binding agreements between Mr. Abramovich and Mr. Berezovsky, in the terms alleged by the latter in relation to Sibneft, it is necessary to have a detailed understanding not only of those events, but also of the part each of the two men played in them and their respective contributions to what happened. The evidence as to the events themselves (i.e. objectively what happened) was largely not in dispute. What was in dispute were the roles respectively played by Mr. Berezovsky and Mr. Abramovich in relation to the creation of Sibneft, what was referred to as the loans-for shares programme, and Sibneft's subsequent privatisation. In so far as facts were in dispute, the following account reflects my findings in relation to those issues which I consider material.

201. Mr. Berezovsky and Mr. Abramovich each contended that the evidence relating to their respective contributions to the process strongly supported their respective cases.

The first stage – the formation of Sibneft

202. Mr. Berezovsky's "lobbying" of the Russian government was described in paragraphs 110 to 133 of his fourth witness statement. The essence of it was that he arrived at an understanding with President Yeltsin and his officials that, if the government agreed to take the necessary steps to put the businesses of Noyabrskneftegaz and Omsk Oil under the control of his associates, he (Mr. Berezovsky) would be able to extract enough money from Sibneft to fund the cost of ORT's operations and to put ORT's considerable influence behind Mr. Yeltsin's campaign for re-election in the presidential elections due in June 1996. In his written evidence, Mr. Berezovsky put the point in this way[90]:

> "The main way in which I was able to persuade President Yeltsin and the government to agree to the creation of Sibneft was by emphasising the importance of ORT for the re-election of President Yeltsin in the following presidential elections, and the need to secure a new business venture which could provide the funding to support ORT ... I discussed with President Yeltsin ORT's support of the democratic reforms in the upcoming election. I explained that ORT continued to be loss-making and short of funds and said that alternative funding would have to be found in order for ORT to maintain its influence and stage a strong television campaign in favour of the re-election of Mr. Yeltsin, a democratic candidate against the communists."

203. As Mr. Abramovich accepted, without the exercise by Mr. Berezovsky of his political influence, Mr. Abramovich would not have obtained control of Sibneft. Had Mr. Berezovsky not provided his assistance:

i) Noyabrskneftegaz and Omsk Oil would have been consolidated into the Russian State oil company, Rosneft, for which they had been earmarked; and

ii) the Russian State would not have included Sibneft in the loans-for-shares programme, as to which see below.

204. In addition to Mr. Berezovsky's lobbying for political support, it was essential to obtain the support of the top management of Noyabrskneftegaz and Omsk Oil. The critical figures here were the "Red" directors, Mr. Viktor Gorodilov, the then General Director of Noyabrskneftegaz, and Ivan Litskevich ("Mr. Litskevich"), the then General Director of Omsk Oil, and subsequently Konstantin Potapov ("Mr. Potapov") who replaced Mr. Litskevich. Mr. Abramovich knew Mr. Viktor Gorodilov and Mr. Litskevich from his previous dealings with Noyabrskneftegaz and Omsk Oil, and indeed Mr. Berezovsky had been impressed on first meeting Mr. Abramovich that Mr. Abramovich had been able to forge a business relationship with Mr. Viktor Gorodilov. Mr. Berezovsky also knew them.

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[90] Berezovsky 4th witness statement witness statement, paragraphs 111, 115, and cf paragraphs 117-119, 153.

205. The evidence showed that Mr. Berezovsky played an important role in securing the support of the Red directors to the acquisition of Noyabrskneftegaz and Omsk Oil by Sibneft and their effective merger. But it also showed that Mr. Abramovich played an important part, as he was responsible for negotiating the terms and conditions with the Red directors. Mr. Litskevich did not initially support the merger proposal, and was vacillating, so Mr. Abramovich asked Mr. Berezovsky to sign a letter to him recommending him to do so. The letter contained a manuscript note from Mr. Berezovsky: "Roman Abramovich (whom you know) will come to you today and explain everything. You can trust him". Mr. Abramovich agreed that this note was necessary because otherwise Mr. Litskevich would not have taken him seriously as someone who could bring about the merger of two major State assets by means of a presidential decree.

206. On 10 February 1995, Mr. Viktor Gorodilov wrote to President Yeltsin, explaining the benefits of creating an independent oil company. There was a dispute between Mr. Berezovsky and Mr. Abramovich, about which of them arranged for Mr. Viktor Gorodilov to write this letter. Mr. Abramovich suggested he did so; Mr. Berezovsky on the other hand suggested that he and Mr. Abramovich did so. It is not necessary for me to resolve this dispute. What was clear, as Mr. Abramovich accepted during cross-examination, was that Mr. Berezovsky, as a much more important and influential person than Mr. Abramovich at that time, was instrumental in obtaining Mr. Viktor Gorodilov's support.

207. Mr. Abramovich was cross-examined about various agreements signed by Mr. Berezovsky on behalf of a proposed entity, Neftyanaya Finansovaya Korporatsiya, purportedly as its chief executive officer, with, respectively, Mr. Viktor Gorodilov and Mr. Potapov. Neftyanaya Finansovaya Korporatsiya may have been destined as the vehicle to be used for the purposes of exercising management control of Sibneft; however it was never in fact incorporated. The agreements (or proposed agreements) were:

i) an agreement dated 9 September 1995 between Mr. Viktor Gorodilov and Mr. Berezovsky relating to the proposed creation of Neftyanaya Finansovaya Korporatsiya, stating that that company would have a right to take decisions on all important matters in relation to Sibneft activity;

ii) an almost identical agreement between Mr. Berezovsky and a Mr. Konstantin Potapov, then Acting President of Omsk Oil Refinery, dated 11 October 1995;

iii) an agreement "on mutual obligations" dated 9 September 1995 purportedly between Neftyanaya Finansovaya Korporatsiya and Sibneft, signed by Mr. Berezovsky and Mr. Viktor Gorodilov, pursuant to which, apparently, it was agreed that Neftyanaya Finansovaya Korporatsiya would ensure that Mr. Viktor Gorodilov received a "monthly base salary" of $100,000; that upon expiry of his first year of employment, he received an equity stake in Sibneft of $3 million; that upon expiry of the next two years he received an additional equity stake of $5 million; and that he would receive a residence in Moscow to meet "all his requirements";

iv) an agreement on similar terms (although the financial rewards were of lesser amount), but purportedly between Neftyanaya Finansovaya Korporatsiya and

Omsk Oil, dated 12 October 1995, signed by Mr. Berezovsky and Mr. Potapov.

208. Mr. Abramovich explained that Mr. Viktor Gorodilov was well-respected not only in the industry, but also among company personnel, and that it was essential to secure his support to the Sibneft proposal. Given his role at Omsk Oil, Mr. Potapov was similarly important. Mr. Abramovich said that he had negotiated all the terms and conditions of the above agreements with the two men, but, in order to make these agreements more meaningful had asked Mr. Berezovsky to sign them on behalf of Neftyanaya Finansovaya Korporatsiya, since his status, influence and political position at the time added credibility to the obligations in the agreements. He also gave evidence to the effect that, in the end, Neftyanaya Finansovaya Korporatsiya was never formed, although the vehicle eventually set up for the bid in the loans-for-shares auction did have a very similar name. The relevance of these agreements was that they show the importance which Mr. Abramovich attached to the involvement of Mr. Berezovsky. They also demonstrate the role which Mr. Abramovich played in their negotiation.

209. Subsequently Presidential Decree No. 872 dated 24 August 1995 "On the Establishment of the OAO Siberian Oil Company" (already defined above as "the August 1995 Decree"), formally authorised the formation of Sibneft. The August 1995 Decree also provided that the Russian government was "… to provide during the formation of OAO Sibneft that 51% of its shares be kept in the federal property for three years."

210. At its inception, Sibneft was one of Russia's largest companies. Its component units had produced about 22 million tons of crude oil in 1994 (8% of Russian production), with estimated reserves of 835.7 million tons, and a refining capacity of about 26 million tons a year.

211. It was common ground that Mr. Berezovsky's political influence and connections was invaluable in relation to this stage. However, contrary to the evidence which he gave, I do not accept that his connections with Mr. Victor Gorodilov were determinative. Whilst, as I have held above, his participation was extremely important, Mr. Abramovich himself also had very strong business relations with Mr. Victor Gorodilov as a result of the dealings between the Trading Companies and Noyabrskneftegaz.

The second stage – the loans-for-shares programme applied to Sibneft

212. The Russian government's loans-for-shares programme appears to have originated in March 1995. Mr. Vladimir Potanin ("Mr. Potanin"), a Russian businessman who owned substantial interests in OneximBank (sometimes known as UneximBank), and was later first Deputy Prime Minister[91], along with others, conceived, and persuaded the Kremlin to adopt, the loans-for-shares scheme, whereby a consortium of banks offered to lend money to the Russian government secured on State holdings in leading Russian companies. The proposal was formally adopted on 31 August 1995, with the issue of Presidential Decree No. 889 "On Pledging Federally Owned Shares". This provided for the Committee for the Management of State Property to determine within

[91] From 1996-1997.

ten days which shares would be pledged. Sibneft was not on the original list of companies to be included in the "loans-for shares" programme.

213. Mr. Abramovich's evidence was that, although his initial goal had simply been to create Sibneft, in September 1995 he and Mr. Berezovsky met the Committee for the Management of State Property to discuss Sibneft's inclusion on the list of companies to be included in the "loans-for shares" programme.

214. Mr. Berezovsky had separate meetings on the same subject with Alfred Kokh ("Mr. Kokh"), the Deputy Head and acting Chairman of the committee, and with Mr. Viktor Gorodilov.

215. Decree No. 972 of the Government of the Russian Federation dated 29 September 1995 provided for the Committee for the Management of State Property to contribute to the authorised share capital of Sibneft the State's shares in Noyabrskneftegaz, Omsk Oil, OAO Noyabrskneftegazgeofizika ("Noyabrskneftegazgeofizica") (an oil exploration company associated with Noyabrskneftegaz), and OAO Omsknefteprodukt ("Omsknefteprodukt") (a marketing company associated with Omsk Oil). At the same time the decree approved a summary privatisation plan for Sibneft, which envisaged that 51% of Sibneft's shares would be issued to the State for a period of three years (as had been expressly required by the August 1995 Decree), and that the remaining 49% would be sold by tender or auction to private investors. Pursuant to this decree, Sibneft was officially registered on 6 October 1995 in the City of Omsk. Mr. Viktor Gorodilov was appointed as its first President. On 11 October 1995, the Committee for the Management of State Property issued directive No 1462-r, confirming the transfer of shares in each of Noyabrskneftegaz, Omsk Oil, Noyabrskneftegazgeofizica and Omsknefteprodukt to Sibneft and approving the summary privatisation plan of Sibneft.

216. Again, Mr. Abramovich accepted that Mr. Berezovsky's political influence and connections were invaluable in relation to this stage of the process. It was clear however that Mr. Abramovich and his team also played a significant part in the process.

The third stage: the auction of the right to manage a 51% Shareholding in Sibneft in 1995[92]

217. A further Presidential Decree and a Government Decree, both dated 27 November 1995, approved arrangements for selling, by auction, the right to enter into a "loans-for-shares" agreement in respect of the 51% of Sibneft shares to be retained in State ownership. Under these arrangements, participants in the auction were to make competitive bids stating the amounts which they were willing to lend to the State. The bidder offering the largest loan would enter into a loan agreement and security documentation in prescribed form, taking a pledge by way of security over the 51% of the equity reserved to the State, and acquiring the right to manage that holding for three years. The successful bidder would obtain no property in the Sibneft shares by

[92] A summary of the privatisation process of Sibneft was set out in a report of the Russian Audit Committee produced in December 1997 ("the Audit Chamber Report"). According to Mr. Shvidler, the report was prepared without reference to Sibneft. Neither Mr. Abramovich nor Mr. Berezovsky considered it to be accurate in every respect nor did they accept or endorse all its conclusions. It is not necessary for me to address whether, or in what respects, it was inaccurate.

virtue of these arrangements. In the event of a default, the successful bidder would be required to auction the shares and apply the proceeds in repayment of the loan.

218. This was not an auction of Sibneft shares in themselves. What was being sold was the right to lend money to the State on the security of a pledge of the 51% shareholding in Sibneft which the State proposed to retain. Under the terms of the pledge, the lender would have the right to manage the company for a period of three years. Under the terms of the pledge, the lender became nominal holder of the shares only whilst ownership remained with the Russian government[93]. The lender had the right to sell the shares only after September 1996 (assuming no repayment of the loan by the State) and, even then, only as agent of the government. The successful bidder accordingly acquired management control but no proprietary interest. In a press interview on 9 January 1996, Mr. Berezovsky made this point with some force:

> "It seems that the public at large have got the impression that the companies are sold. While in fact the companies by no means are sold, the companies are transferred to management for a very limited period."

219. There was an issue about whether it was inevitable that the Russian government would default on these loans, with the result that the State's 51% holding would in due course be sold, but the area of dispute was narrow. At the time of the decree authorising the loans, there was no provision in the Russian federal budget for their repayment, but that might or might not have changed later. Mr. Berezovsky said that it was practically inevitable that the loan would go into default because the Russian government was bankrupt. Mr. Shvidler's evidence was that default was probable but by no means certain. One of the many uncertainties affecting the position was the forthcoming 1996 Presidential election. If the Communist candidate were to be elected, there would be no question of the shares then being allowed to fall into private hands. The precise degree of likelihood that the loan to the State would go into default is not an issue that it is necessary for me to decide; all I need say is that it was highly likely, but not inevitable.

220. The loans-for-shares auction was held on 28 December 1995. The rules governing the conduct of the auction required at least two bidders. The successful bidder was Neftyanaya Finansovaya Kompaniya ("NFK"), with the support of AKB Stolichny Savings Bank ("SBS"). The under-bidder was a consortium organised by Bank Menatep. As was common ground, NFK never acquired any shares in Sibneft; all it ever had was management control[94].

221. NFK had been created just before the loans-for-shares auction. The Audit Chamber report records that NFK was registered on 7 December 1995. NFK's foundation agreement was dated 6 December 1995. NFK was 50% owned by OOO Vektor-A (which, as was common ground, was indirectly owned by Mr. Abramovich) and 50% by Consolidated Bank (which, as was common ground, and as I have already mentioned, was under the effective management control of Mr. Berezovsky). Again, as I have already mentioned, Mr. Berezovsky had, at most, a 13.7 % indirect interest in Consolidated Bank, and thereby, at most, a 6.85 % indirect interest in NFK.

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93 See the pledge agreement, paragraph 2.1 and 2.2. See also article 2 of the linked commission agreement.

94 Berezovsky Day 5, page 83: "NFK just manage 51 shares of Sibneft".

222. It was Mr. Abramovich's idea to arrange for NFK to be partly owned by Consolidated Bank. His reason was that Consolidated Bank was widely regarded as being associated with Mr. Berezovsky, and the association with Mr. Berezovsky was seen as politically valuable. In practice, Mr. Abramovich controlled NFK through its officers, all of whom acted on his instructions; and, in practice, it was Mr. Abramovich and his associates who managed Sibneft, not NFK.

223. NFK had no genuine competition in the loans-for-shares auction. Effectively, between them, Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich, had persuaded other potential bidders, by various means, either not to bid at all, or to put in bids of lesser amount than NFK.

224. The only other bidder at the auction itself was a syndicate organised by Bank Menatep, controlled by Mr. Khodorkovsky. He had agreed with Mr. Berezovsky, in advance, to bid slightly more than the reserve and slightly less than NFK. According to Mr. Berezovsky, this resulted from earlier agreements with Mr. Khodorkovsky and his Menatep colleagues, and with other oligarchs[95] who were interested in obtaining control of other State businesses under the loan-for-shares scheme, that they would not compete against each other in any of the loans-for-shares auctions. A third bidder was disqualified on technical grounds.

225. A fourth bidder, OAO Samarskaya Metallurgicheskaya Kompaniya ("Sameko"), an aluminium company, was persuaded by Mr. Patarkatsishvili to withdraw by a promise of payment of debts which it owed to AB Inkombank ("Inkombank"), a Russian bank owned by Vladimir Vinogradov. Inkombank was the main creditor of Sameko at the time and had been pushing Sameko to take part in the Sibneft auction as Inkombank's bidding vehicle. Mr. Abramovich had learnt of its proposed bid, and had discussed it with Mr. Patarkatsishvili, who had said that he would seek to persuade the General Director of Sameko, Maxim Ovodenko ("Mr. Ovodenko"), to withdraw Sameko's bid. Mr. Patarkatsishvili, together with Mr. Victor Gorodilov, travelled to Samara a day or two before the auction to negotiate with Mr. Ovodenko. The day before the auction itself, Mr. Abramovich, Mr. Kulakov, Mr. Fomichev and Mr. Andrei Gorodilov (Mr. Victor Gorodilov's son), also travelled to Samara to meet the Sameko personnel. Although by the time they arrived, the negotiations in principle had been completed by Mr. Patarkatsishvili and by Mr. Victor Gorodilov, there was a final meeting at which Mr. Abramovich and his team attended in order to complete and sign the documentation which guaranteed compensation to Sameko for all its losses resulting from its withdrawal from the auction as well as to help with the restructuring of Sameko's debts with Inkombank should this become necessary.

226. Because Mr. Abramovich was going to be in Samara, he and Mr. Berezovsky agreed that Mr. Berezovsky would present the bid at the auction on behalf of NFK. This also had the advantage of lending Mr. Berezovsky's undoubted political reputation and stature to the bid. Although Mr. Berezovsky claimed in his written evidence that the amount of the bid was left to his discretion, that statement was not correct. The day before the auction, he and Mr. Abramovich had discussed the current bid situation and Mr. Abramovich had set a range for the bid of up US $101 million. They had also discussed a second option for the bid, in case the bid from the key competitor,

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[95] These included the partners in Norilsk Nickel (Mr. Potanin and Mr. Prokhorov), Mr. Fridman and Mr. Aven; and Mr. Alekperov (of Lukoil)

Sameko, was not withdrawn. They agreed that, in that event, Mr. Berezovsky would be authorised to put forward what Mr. Abramovich referred to as a "totally out-of-this-world" alternative bid figure of $217 million. Mr. Abramovich knew that the second figure was unrealistic because:

i) NFK did not have funds of that amount available;

ii) because, he, Mr. Abramovich, would not be able to raise them; and

iii) because SBS would not have been prepared to provide a loan for that amount.

Mr. Abramovich knew that he was taking a gamble, and that if NFK submitted such a bid and failed to come up with the declared amount, NFK would have lost its deposit of $3 million. However, on the other hand, even if NFK failed to come up with that amount, it still preserved the position because the result would be that the auction would have to be conducted again. However, that was nonetheless a high risk strategy and the priority was to persuade Sameko not to bid at all.

227. At the time of the auction Mr. Abramovich, and Mr. Fomichev were on their way back from Samara with Mr. Patarkatsishvili. Mr. Berezovsky went to the auction with two bids: the lower bid, for $ 100.3 million, which was intended to be submitted; the other, for $ 217 million, was kept in his pocket in case Mr. Patarkatsishvili failed to persuade Sameko to withdraw. But it was not necessary to use it. Mr. Patarkatsishvili, together with a representative of Sameko, arrived from the airport at the auction just five minutes before it began. The representative of Sameko brought with him written confirmation from Sameko that it had withdrawn from the process.

228. The bid price, i.e. the amount to be lent to the Russian Ministry of Finance, was $ 100.3 million, which was regarded as a very large amount of money to raise in Russia at the time[96]. Under the agreement with the State, the lenders were NFK and SBS. Of the loan monies, $ 3 million had been paid directly by NFK by way of pre-auction deposit against the amount of the loan. This amount was borrowed by NFK from Russian Industrial Bank and repaid within a month. The role of SBS was, in effect, to interpose itself as the nominal lender of the balance ($ 97.3 million) in order to give financial assurance to the State.

229. However, although formally the lender, SBS had little, if any, exposure to the financial risk that the State would not repay. As the evidence of Messrs Abramovich, Shvidler, Andrei Gorodilov and Grigoriev showed, SBS was fully secured by:

i) cash collateral counter-deposits of:

a) $ 17.3 million held in Runicom SA's account at SBS (funded by Mr. Abramovich's Trading Companies); Mr. Abramovich and Mr. Andrei Gorodilov explained that the Trading Companies raised finance on the strength of future long-term contracts with Noyabrskneftegaz and Omsk Oil Refinery, and that it was these funds which were deposited with SBS; and

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96 Shvidler 3rd witness statement, paragraph 45.

b) cash deposits of $ 80 million held in the accounts of Noyabrskneftegaz and Omsk Oil at SBS; these were raised from trade finance arrangements secured by future production at Noyabrskneftegaz and Omsk Oil themselves;

which had been deposited in SBS prior to the auction;

ii) guarantees and pledges from Runicom for the full amount;

iii) the pledge of the State's interest in 51% of Sibneft's shares from NFK as the pledge-holder.

230. A back-to-back guarantee was also provided by Bank Menatep to SBS. Due to the amount involved, it was necessary to obtain this type of back-to-back guarantee from a second bank, since the Russian Central Bank rules in force at the time limited a bank's commitments to a proportion of its capital. However, like SBS, Bank Menatep had little or no financial exposure in providing its guarantee, since the $ 100.3 million had been deposited in SBS prior to the auction as already described above.

231. The loans-for-shares auction for Sibneft has been a controversial topic in Russia ever since it took place. In December 1997, the Audit Chamber of the Russian Federation issued a highly critical report on the way it was authorised and conducted[97]. The main criticisms of its conduct were that the reserve was set too low, and that there was no effective competition because it had been stitched up in advance. Mr. Berezovsky has always robustly rejected these criticisms, but at trial neither he, nor Mr. Abramovich, demurred from them. Mr. Berezovsky made the different point, however, that the State received good value because, until the businesses incorporated in Sibneft were turned round by their new management, they made large losses which were a burden to the State. It is not necessary for me to comment upon, let alone decide, whether the criticisms of the Audit Chamber were well-founded, or whether the authorisation, or conduct of the auction was corrupt or unlawful practice as a matter of Russian law at the time[98].

232. After the auction, Mr. Andrei Blokh became the first vice president of Sibneft, and Mr. Abramovich's associate, Mr. Shvidler, became the vice president for finance. Mr. Abramovich himself became the Head of the Moscow branch. Mr. Shvidler and Mr. Gorodilov gave evidence that, for the purposes of the loans-for-shares auction, and appointment to the board of Sibneft, on behalf of NFK, Mr. Berezovsky was called the "chairman" of NFK, but that this was a meaningless title because NFK had no board, NFK being a ZAO company which was run by a general director, and the NFK charter specified neither that position nor a body such as a board of directors. Mr. Shvidler said that "he needed to be called something". Nor did Mr. Berezovsky subsequently perform any functions or duties related to that, or any other, position in NFK, such as, for example, chairing meetings. Indeed in his written evidence not only did Mr. Berezovsky not assert that he was chairman of NFK, but also disavowed

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97 As to the accuracy of which see above.

98 During the course of the trial I received unsolicited communications from various Russian persons complaining *inter alia* in relation to the acquisition of Sibneft. Everything which I received was made available to the parties. Such materials were not deployed in evidence and I do not propose to refer to them further.

any "hands-on involvement in deciding on the corporate structures used for the purpose of the vehicles that bid in the December 1995 auction[99]."

233. Mr. Abramovich did not dispute the significance of Mr. Berezovsky's political contribution to the creation of Sibneft, and the achievement of management control over it. Mr. Abramovich accepted that it was indispensable. He also accepted that the help which Mr. Patarkatsishvili gave in persuading Sameko to withdraw its bid was invaluable, and that, without such help, Sameko would not have provided a letter of confirmation to that effect. It was also common ground that Mr. Berezovsky had been instrumental in persuading Mr. Khodorkovsky and Bank Menatep to put in a lower bid than NFK.

The extent of Mr. Berezovsky's contribution to the financing of the bid

234. There was, however, an issue between the parties about Mr. Berezovsky's contribution to the commercial preparations for the auction, and the nature of the contribution which he made to the raising of bank finance to support the bid.

235. My findings in relation to this issue may be summarised as follows:

i) I conclude that Mr. Berezovsky has exaggerated the role which he claimed that he played in relation to the obtaining of finance from SBS and the contribution which he claimed[100] he made to the ability of NFK to utilise deposits lodged by Noyabrskneftegaz and Omsk Oil with SBS as cash collateral for its loan to the State.

ii) Mr. Berezovsky's relationship with Mr. Smolensky, the Chairman of the SBS Board, was clearly an important and valuable factor in persuading SBS to support NFK's bid[101]. Mr. Berezovsky introduced Mr. Abramovich to Mr. Smolensky. Mr. Abramovich and Mr. Berezovsky discussed NFK's participation in the loans-for-shares scheme with Mr. Smolensky[102]. Mr. Berezovsky also provided Mr. Smolensky with his own personal assurance in relation to SBS's involvement. In his witness statement Mr. Berezovsky stated "I also gave Mr. Smolensky a personal guarantee of repayment of the loan to SBS[103]." That statement might have conveyed the impression to the reader that Mr. Berezovsky had personally provided a legally binding written guarantee to repay the loan. However that was not the case. In cross-examination Mr. Berezovsky admitted that all he had given Mr. Smolensky was an oral assurance that SBS would be paid:

> "Yes, I shake him [Mr. Smolensky's] hand and he said, 'Boris, you are person who I trust'" [104].

The fact that no binding personal guarantee was given by Mr. Berezovsky was confirmed by Mr. Grigoriev, who was the Chairman of the SBS Management

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99 See Berezovsky 4th witness statement witness statement, paragraph 147-149.
100 See, for example, paragraph 324 of Mr. Berezovsky's written closing submissions.
101 Shvidler 3rd witness statement, paragraph 65.
102 Abramovich 3rd witness statement, paragraph 6.
103 Berezovsky 4th witness statement witness statement, paragraph 140.
104 Berezovsky Day 5, page 92.

at the time (and later, from April 1997, Chairman of the SBS Board of Directors) and Mr. Smolensky's nephew[105].

iii) Once the introduction had been made, however, it was Mr. Abramovich who conducted the negotiations to raise the finance for NFK's bid. Whilst Mr. Smolensky may have met informally with Mr. Berezovsky to discuss the loans-for-shares auction with him, the negotiations with SBS of the terms for the financing of the loan were conducted by Mr. Abramovich and his team, including in particular Mr. Andrei Gorodilov, with, on the SBS side, Mr. Smolensky, Mr. Aleksey Rasskazov, Mr. Grigoriev and other employees of SBS. The commercial reason why SBS was willing to lend its name to the bid, apart from the fact that it was fully cash collateralised, was the agreement that, if the bid were successful, SBS would obtain all Sibneft's and Runicom's banking business. Sibneft's cash flow by late 1995 was in the region of $ 1 billion per year, and thus to become the principal banker to Sibneft was a significant coup for SBS. That commercial driver had nothing to do with Mr. Berezovsky's association with Mr. Smolensky. Mr. Grigoriev's evidence also made it clear that the fact that SBS agreed to provide financing for NFK's bid had nothing to do with SBS' financing of ORT. According to Mr. Grigoriev, SBS did not regard the ORT project funding as commercially profitable and had provided a soft loan of $ 55.4 million finance to ORT quite regardless of the loans-for-shares auction relating to Sibneft.

iv) Contrary to Mr. Berezovsky's claim[106], Mr. Abramovich did indeed contribute his own, or, at least his own company, Runicom's, funds, in an amount of US $17.3 million to NFK's bid, since that amount was deposited with SBS by way of cash collateral. To that extent Mr. Abramovich and his business interests were at risk. There was no evidence to suggest that Mr. Berezovsky in any way contributed to the ability of Runicom to raise such a sum by means of trade financing agreements. Mr. Berezovsky asserted in his evidence that it was "completely wrong" that Mr. Abramovich had provided funds through Runicom because, alleged Mr. Berezovsky, Mr. Abramovich did not have such amounts available at that time. I reject Mr. Berezovsky's evidence on this point; he admitted that he had no knowledge of Runicom's finances[107]. Moreover, apart from Mr. Abramovich, Mr. Shvidler, Mr. Gorodilov and Mr. Gregoriev gave evidence about the financing of the loan which I accept.

v) Nor was there any evidence to support Mr. Berezovsky's suggestion[108] that the trade finance agreements that were entered into by Noyabrskneftegaz and Omsk Oil, which enabled those companies to lodge cash collateral in the sum of US $100.3 million in their deposit accounts with SBS, resulted from the assistance of Mr. Berezovsky. Nor do I accept the implied suggestion that it was because of his relationship with the Red directors that Noyabrskneftegaz and Omsk Oil were prepared in effect to provide their own funds as collateral

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105 As I have already said, I reject Mr. Berezovsky's assertion that adverse inferences should be drawn against Mr. Abramovich because he did not call Mr. Smolensky. There was no real need to do so, once Mr. Berezovsky accepted that he had not provided a personal guarantee.

106 See paragraph 316 of Mr. Berezovsky's written closing submissions.

107 Berezovsky Day 5, pages 89-90.

108 See paragraph 257(1) of Mr. Berezovsky's written closing submissions.

for the financing of NFK's bid to acquire management control of Sibneft. There was no evidence to support any such suggestion. Apart from the participation referred to above on the part of Mr. Berezovsky in persuading Bank Menatep to put in a lower bid at the auction, it was Mr. Abramovich and his team who were responsible for making the arrangements for the loans-for-shares auction, including those relating to the back-to-back guarantee given by Bank Menatep. I do not accept the assertion that the involvement of Bank Menatep as guarantor of SBS's obligation to the State under the loans-for-shares agreement was also "… thanks in very large measure to Mr. Berezovsky's involvement"[109]. Whilst, no doubt, Mr. Berezovsky's relationship with Mr. Khodorkovsky, the owner of Bank Menatep, and Leonid Nevzlin, a President of Bank Menatep, greased the wheels for Mr. Abramovich, and was very valuable in that respect, it was the latter, together with his colleagues, who were responsible for negotiating the terms of the guarantee which involved little or no risk to Bank Menatep, given the cash collateral deposited with SBS. Mr. Nevzlin claimed, that, at Mr. Berezovsky's request, he had had a role in relation to Bank Menatep's involvement. But this was not borne out in cross-examination. He admitted that he did not know anything about the security for the loan, or the details of the deposits at SBS, and did not appear to be aware that the only reason for the Bank Menatep guarantee was because of the Central Bank rules, rather than because SBS (given its fully secured status) needed the guarantee. Moreover neither he nor Mr. Berezovsky were involved in the negotiations between Mr. Abramovich and Mr. Konstantin Kagalovsky of Bank Menatep in relation to its involvement as guarantor.

vi) Mr. Berezovsky's evidence was that he expended considerable effort in attempting to obtain funding for the project. I have no doubt that the critical issue of raising finance would have been discussed as between Mr. Abramovich and Mr. Berezovsky, possibly also with Mr. Shvidler present, on occasions prior to the auction. As the latter described, at that time they were all reviewing their connections to see if they knew people who might be able to assist. However, although Mr. Berezovsky did contact his acquaintance, the financier, George Soros, in the hope that Mr. Soros would assist, and may well also have canvassed other potential investors in Europe and the Far East, these approaches came to nothing. The proposal was regarded as far too risky for investors outside Russia.

vii) I reject Mr. Berezovsky's evidence and that of Dr. Nosova that members of his team, including Dr. Nosova and Mr. Waldman, worked closely on the bid.[110] This claim was not substantiated in cross-examination and, as I have already said, I formed a poor impression of Dr. Nosova as a witness. I accept that she may have been the person who identified the error in the financial information submitted by a potential rival bidder, Inkombank, which forced it to withdraw from the auction, but I do not accept that she and Mr. Waldman played any, or any meaningful, part in the auction process. I prefer Mr. Shvidler's account. He was a principal negotiator in Mr. Abramovich's team and was responsible for organising funding and financial matters in consultation with

[109] See paragraph 315(4) of Mr. Berezovsky's written closing submissions.

[110] Berezovsky 4th witness statement, paragraph 147

Mr. Abramovich. His evidence was that, although Dr. Nosova may have been advising Mr. Berezovsky, she was not involved in the auction process, or with the negotiations between NKF and third parties. Indeed she was not generally even present at meetings at which the real business was discussed. I accept Mr. Shvidler's account that Mr. Abramovich's team, of which Mr. Shvidler was part, ran the auction process and did the necessary work.

236. Dr. Dubov, one of Mr. Berezovsky's witnesses, gave unchallenged evidence that, towards the end of 1995, he attended SBS with the LogoVAZ seal, having been told by Mr. Patarkatsishvili that he was in financial negotiations with SBS and might require a guarantee from LogoVAZ and Dr. Dubov's signature. Dr. Dubov was shown a draft of the guarantee which it was proposed that LogoVAZ would give. He did not recall to whom the loan was to be given. He was kept hanging around SBS offices for some time but, in the event, no guarantee from LogoVAZ was required. It was for an amount close to $100 million, which, according to Dr. Dubov, was approximately half of what LogoVAZ was worth at the time, which was a matter which concerned him. Mr. Grigoriev did not recall any discussion of a guarantee; he commented that such a guarantee might have been prepared, but that, if it was, then it was not in connection with the Sibneft transaction but rather in connection with a loan to ORT which was also being documented at that time. However ORT's line of credit which was being negotiated was only in the sum of approximately $20million, whereas a figure of $100 million was close to the amount which SBS had undertaken to lend in respect of the Sibneft transaction. Mr. Abramovich himself did not recall any discussion about a proposed guarantee from LogoVAZ and pointed out that, in his view, the required amount would have been significantly greater than half of the financial capacity of LogoVAZ at that time. Whilst I accept that there may have been some discussion as between Mr. Patarkatsishvili and an SBS representative about the possibility of LogoVAZ providing a guarantee, it clearly came to nothing.

237. Accordingly I reject the conclusion contended for by Mr. Berezovsky that he "played a central role in <u>all</u> of the major aspects of the funding for "the loan for shares" auction"[111].

The fourth stage - the first cash auction in late 1995/early 1996

238. The 49% of Sibneft's share capital which was not under NFK's management control pursuant to the pledge under the loans-for-shares scheme, was sold off by the Russian State in three separate auctions conducted in 1995 and 1996.

239. The first of the three cash auctions by which the State disposed of the 49% of Sibneft earmarked for immediate privatisation closed on 4 January 1996. The auction began on 1 November 1995 and bids were accepted until 4 January 1996 (originally the deadline had been 1 December 1995 but this was extended on 27 November 1995). 15% of the company was available for sale. Out of the 15%, 12.22% was acquired by Runicom SA at a cost of about $ 30 million[112].

240. Mr. Abramovich's evidence was that the decision to participate in this cash auction was his, and his alone; that, although he and Mr. Berezovsky discussed the auctions

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111 See Mr. Berezovsky's oral and written closing submissions.

112 Shvidler 3rd witness statement, paragraph 74; Gorodilov 1st witness statement, paragraph 23.

from time to time, there was never any discussion of anyone else, such as Mr. Berezovsky and Mr. Patarkatsishvili, owning the shares acquired; and that it was Mr. Abramovich and his team who prepared the bid and arranged the funding for it.

241. Mr. Berezovsky said that he was aware that the auctions were taking place but was not involved in the arrangements for participating, and did not recall being consulted on the bidding process or structures used. He accepted that he made no attempt to find out before the auctions whether or not Mr. Abramovich proposed to bid, and if so at what price, or even (so far as his evidence shows) to discover afterwards what the outcome had been. Nor did he claim to have made any direct contribution to the cost of acquiring the shares.

242. The financing for Runicom SA's acquisition of the 12.22% stake was as follows: $ 24.5 million (of the total purchase price of $ 26 million) was lent by SBS Bank to Runicom pursuant to two loans secured by some sort of suretyship[113] or guarantee agreement from Omsk Oil, and, after 7 February 1996, by a pledge of the Sibneft shares acquired by Runicom SA. The remaining $ 1.5 million came from Runicom's own funds, generated from its trading operations in oil and petroleum products.

243. In his oral evidence, Mr. Berezovsky said that the money used to buy the Sibneft shares in this first cash auction of shares, derived from profits generated by Sibneft's or Runicom's trading activities (which, was unclear) as a result (effectively) of transfer pricing. As such, he claimed, as a result of the alleged 1995 Agreement, any such funds retained in Sibneft or Runicom belonged to him and Mr. Abramovich equally. He also suggested that SBS would not have made this loan to Runicom, had it not been for his influence with Mr. Smolensky. I do not accept this description of how this first acquisition of shares was financed. The evidence showed that, as I have described, it was funded principally by a loan from SBS and from Runicom SA's own funds. Nor do I accept that Mr. Berezovsky (or indeed Mr. Patarkatsishvili) played any part - other than the original introduction to Mr. Smolensky - in obtaining finance from SBS. The negotiations to obtain the finance were conducted by Mr. Abramovich's team.

The fifth stage – the second cash auction in September 1996

244. The second cash auction was held on 20 September 1996. 19% of Sibneft was sold by auction to ZAO Firma Sins ("Firma Sins") for about $ 60 million (comprising $ 15 million payable under the share sale agreement and $ 45 million in obligations to fund Sibneft's investment programme). Firma Sins was a company owned as to 49.99% by ZAO Branko and as to 49.99% by ZAO PK-Trast. It was common ground that ZAO Branko was (indirectly) owned by Mr. Abramovich. So far as PK-Trast was concerned, it had been registered on 25 May 1996, prior to the auction, with Mr. Berezovsky and Mr. Abramovich as joint co-founders and each nominally owning half of its shares. Mr. Abramovich's evidence (which I accept) was: that he asked Mr. Berezovsky to become a co-founder of the new company, given the latter's powerful political position in order to make it easier to resolve various issues with different governmental agencies and because the association with Mr. Berezovsky gave credibility to the bid; and that Mr. Berezovsky agreed to do so. At some time

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[113] Mr. Gorodilov's evidence was that $ 24.5 million was loaned from SBS Bank to Runicom SA. the two loans were secured by "sureties" [sic] from Omsk Oil .

before February 1997, Mr. Berezovsky ceased to be a shareholder in PK-Trast and the company was liquidated in 2001. Mr. Berezovsky's evidence was that he had no knowledge of any of this[114]; he accepted that he was not involved in the auction, was not consulted by Mr. Abramovich about it, or about the financing of the acquisition, and personally contributed nothing to the cost of acquisition[115]. He said that it had been Mr. Abramovich's function, pursuant to the delegation which he had been given under the alleged 1995 Agreement, to manage the auctions, to structure the relevant acquisition vehicles and to obtain the finance; that was because he, Mr. Berezovsky, was heavily involved in what were to him far more important priorities than Sibneft, namely winning the election and managing ORT, so as to achieve that end.

245. The bid was funded by a loan from SBS, arranged by Mr. Abramovich and Mr. Andrei Gorodilov. The latter discussed the details with Mr. Alexei Grigoriev, at that time the Chairman of the SBS Management Board. The loan was initially secured by guarantees provided by Noyabrskneftegaz, Omsk Oil and Runicom, and then by the pledge of the Sibneft shares previously acquired by Runicom. Again Mr. Berezovsky suggested that the reason why he had not been asked by Mr. Abramovich to contribute to the funding of the bid, or had not needed to discuss the bid with him, was that the funds used to finance the bid had been generated from profits earned by Sibneft, "… which belonged to me, to Badri [Mr. Patarkatsishvili] and to [Mr. Abramovich]". Mr. Grigoriev give evidence to the effect that neither Mr. Berezovsky nor Mr. Patarkatsishvili was involved in any way in such loans[116]. Mr. Grigoriev was extensively cross-examined in relation to certain inconsistent evidence which he had given to the Russian prosecuting authorities in relation to Mr. Abramovich's participation in this process. Mr. Grigoriev explained in his cross-examination why his evidence to the Russian prosecutor was incorrect. He had been summoned to answer questions about a particular loan to Runicom SA and it was in that context that he said that he had not met or discussed matters with Mr. Abramovich. At the time, he thought, in the context of the enquiry, that it was a "minor issue" that did not warrant correction. Despite the fact that he had clearly not given a full and truthful explanation to the Russian prosecutor, I accept his explanation as to why he had not corrected his evidence. As far as the evidence he gave in these proceedings was concerned, I conclude that he gave his evidence honestly.

The sixth stage – the third cash auction held on 25 October 1996

246. The third and last cash auction was held on 25 October 1996. The remaining 15% of the 49% of the share capital of Sibneft, which had been earmarked for privatisation, was sold to ZAO Refine Oil ("Refine Oil") for approximately $ 48 million. The purchase price consisted of $ 12.5 million paid by Refine Oil under the share sale agreement, and $ 35.5 million in obligations undertaken to fund Sibneft's investment programme; these included direct investments into Sibneft's subsidiaries; annual lease payments for Sibneft's Moscow Representative Office; and payment of tax arrears owed by Sibneft's subsidiaries, payable to the federal budget. It was common ground that Refine Oil was (indirectly) owned by Mr. Abramovich. The bid was

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114 Berezovsky Day 5, pages 124-125.

115 Berezovsky 4th witness statement witness statement, paragraph 156; Berezovsky Day 5, page 100; Day 5, page 101; Day 5 pages 107-108.

116 Grigoriev 1st witness statement, paragraph 25.

funded by a further loan from SBS, secured by guarantees by Sibneft group companies and the pledge of Sibneft shares by companies controlled by Mr. Abramovich. Again Mr. Berezovsky accepted that he was not involved in the auction and contributed nothing to the funding of the acquisition of the 15% holding. Mr. Andrei Gorodilov gave evidence that no assistance had been received from Mr. Berezovsky or Mr. Patarkatsishvili in relation to the acquisition or its funding. Again Mr. Berezovsky suggested that the reason why he had not been asked by Mr. Abramovich to contribute to the funding of the bid, or had been involved in it, was that the funds used to finance the bid had been generated from profits earned by Sibneft which he and Mr. Patarkatsishvili jointly owned with Mr. Abramovich.

The seventh stage - the auction of the State's 51% holding in Sibneft in 1997

247. In due course, as anticipated, the Russian State defaulted on its loan. NFK exercised its right as pledgee to sell the 51% shareholding in Sibneft under its management. The stake was sold at auction on 12 May 1997. The auction was conducted by NFK and Mr. Patarkatsishvili served as chairman of the auction committee. According to Mr. Shvidler, Mr. Patarkatsishvili would certainly have seen it as his role to discourage other bidders. Mr. Abramovich's team, and, in particular, Mr. Gorodilov, arranged the incorporation of another vehicle for the purpose of bidding in this auction, namely OOO Finansovaya Neftyanaya Korporatsiya ("FNK"), a different corporate entity from NFK. Its owners were initially ZAO Alkion Securities and ZAO Obedinennaya Depozitarnaya Kompaniya, two depositary companies owned by SBS. However, it was common ground that, for practical purposes, FNK was indirectly owned and controlled by Mr. Abramovich through these companies.

248. FNK won the auction by offering $ 110 million for the State's 51% stake in Sibneft. In addition, in accordance with the terms of the auction, FNK had the obligation to fulfil a number of requirements including:

i) providing Sibneft with the free use of an office building in Moscow for a term of 7 years;

ii) paying existing tax arrears of Sibneft, or its subsidiaries, owed to the Federal Budget in the sum of approximately $ 10 million;

iii) providing financing for construction and reconstruction of equipment in the sum of US $49 million;

iv) arranging the transfer of 13% of the ordinary share capital of OAO Noyabrskneftegazgeofizika to Sibneft.

249. According to Mr. Andrei Gorodilov, FNK's purchase was financed by SBS, which:

i) lent the two depositary companies, Alkion Securities and Obedinennaya Depozitarnaya Kompaniya, about $ 104.5 million to capitalise FNK;

ii) provided FNK with a loan of about $ 47 million.

250. He also gave evidence to the effect that "… the actual source of the funds …" with which FNK was capitalised were monies which Runicom SA, Noyabrskneftegaz and

Omsk Oil had in the accounts which had been opened by those companies with SBS at the end of 1995, pursuant to the cash collateral arrangements already described in relation to the loans-for-shares auction. It was common ground that the monies which had been deposited as security for SBS' loan at the time of the loans-for-shares auction were the same monies eventually used to capitalise FNK.

251. Once again, the arrangements for the auction and the financing were all organised and negotiated by Mr. Abramovich's team. There was no evidence to suggest that Mr. Berezovsky or Mr. Patarkatsishvili had any discussions with Mr. Abramovich or Mr. Shvidler, or indeed any other members of Mr. Abramovich's team, about financing, about the fulfilment of FNK's obligations following its successful bid, or otherwise about the acquisition, other than the role played by Mr. Patarkatsishvili in relation to the auction process itself. Indeed, Mr. Berezovsky's evidence was that it had all been left to Mr. Abramovich. Mr. Berezovsky acknowledged that he had not been involved in the process and had not been consulted. This was consistent with Mr. Abramovich's evidence that he did not believe that he had discussed the cash auction with Mr. Berezovsky.

252. In his witness statement Mr. Berezovsky did not claim to have had any interest in either ZAO Alkion Securities or ZAO Obedinennaya Depozitarnaya Kompaniya, nor did he claim to have contributed to the cost of FNK's acquisition of the 51%. Indeed, immediately after the auction, on 13 May 1997, he was reported as having denied to Reuters that he had any links to FNK as the buyer of a majority stake in Sibneft and quoted as saying "I have no ties to FNK".

253. But in cross-examination, Mr. Berezovsky at one point appeared to suggest that there was an "… agreement … to transfer what was NFK to FNK", or at least to transfer NFK's management control to FNK. His evidence on this point was difficult to understand; he appeared to be asserting that it was agreed that FNK would be 100% owned by Mr. Abramovich, in order to protect himself and Mr. Patarkatsishvili "better", and in order (at Mr. Abramovich's insistence and with his concurrence) to distance himself (i.e. Mr. Berezovsky) from the business. He also said for the first time that he did have an "interest" in FNK; thus, when it was put to him: "You don't claim to have had any interest in it [FNK], do you?" he replied:

> "Interest, definitely. Interest means that Abramovich hold my shares and pay me my interest as dividends or profit from our activity. It depends in general what sense means "interest". Sometimes interest means shareholding; sometimes interest means just result of the activity of the company."

but he finally admitted that he "did not have any official connections to FNK".

254. What he did assert, however, was that effectively the money used to buy the 51% majority stake "… came from profit which generate Sibneft and the company linked to here like Runicom"[117]. In other words, as with the funds used to finance the earlier auctions, he claimed that, in reality, the cash collateral used to provide security for the SBS finance derived directly or indirectly from profits generated either by Sibneft and its subsidiaries (Noyabrskneftegaz and Omsk Oil) themselves, or by Runicom as a

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[117] Berezovsky, Day 5, page 116.

result of its trading with those companies, whether by means of transfer pricing or otherwise. For that reason he claimed that, under the terms of the alleged 1995 Agreement, he had an interest in those monies and therefore could be regarded as having contributed to the acquisition.

255. At paragraph 353 of Mr. Berezovsky's closing the following submission was made:

> "Accordingly, by the end of 1997 Mr. Abramovich had acquired (as the parties intended) control of a large majority of the shares in Sibneft, 88% in total. In doing so, the only funding actually put in by Mr. Abramovich was the $17.3 million put in by Runicom SA in 1995 – which was re-used in 1997 to fund FNK's outright purchase of the state's 51% stake – and $1.5 million in the January 1996 auctions: a total of just $18.8 million in return for obtaining approximately 90% of Sibneft. All other funds used to acquire shares were therefore a result of the efforts of Mr. Berezovsky and Mr. Patarkatsishvili in 1995, in securing support from SBS; in securing control of Noyabrskneftegaz and Omsk oil refinery; and (after January 1996) in enabling Mr. Abramovich to acquire shares in Sibneft."

256. The evidence did not support the submission that "the parties intended" that Mr. Abramovich should acquire control of a large majority of the shares. As I have already said, it was common ground that the monies which had been deposited as security for SBS' loan at the time of the loans-for-shares auction were the same monies eventually used to capitalise FNK. But the point does not assist Mr. Berezovsky. He had no financial exposure whatever: Runicom did, however, and it was common ground that the company was wholly-owned by Mr. Abramovich and that Mr. Berezvosky had no interest in it.

257. Second, I do not accept the statement that:

> "All other funds used to acquire shares were therefore a result of the efforts of Mr. Berezovsky and Mr. Patarkatsishvili in 1995."

The evidence, as summarised above, simply did not support this assertion, other than in the loosest sense that their efforts in 1995 had assisted in the acquisition of management control of Sibneft, and therefore the ability to procure Noyabrskneftegaz and Omsk Oil to provide security at the time of the loans-for-shares auction and subsequently. But Mr. Berezovsky did not participate in the cash auctions of Sibneft shares or in the negotiations conducted by Mr. Abramovich's team to obtain finance for those share acquisitions. No suggestion was made to the effect that it was unlawful as a matter of Russian law or otherwise commercially inappropriate for subsidiaries such as Noyabrskneftegaz and Omsk Oil to support loans for the acquisition of shares in their holding company; and such security appears to have been acceptable to SBS.

The percentage of Sibneft owned by the public

258. Initially only 2.8% of Sibneft was owned by the public. However that proportion increased when Sibneft increased its capital in 1997. By 1998, public investors comprised 3.2% of the company. Thereafter, the proportion of shares held by the public varied up to 14.8%. The "free" shares were traded on the Moscow Stock Exchange.

The transformation of Sibneft

259. After the original loans-for-shares auction, Mr. Abramovich and his management team transformed Sibneft from a loss-making Soviet-style bundle of assets into a competitive, profitable, modern corporation. A summary of the various steps that were taken was provided by Mr. Shvidler in his evidence. Neither Mr. Berezovsky nor Mr. Patarkatsishvili played any part in this process. Nor did they claim to have done so.

Conclusion in relation to the conduct of the parties between 1995 and 2000: (a)

260. I have already largely set out above my findings as to the part played, and the contribution made, by Mr. Berezovsky in the loans-for-shares auction whereby NFK acquired management control of Sibneft, and the four subsequent auctions of Sibneft shares at which Mr. Abramovich's companies acquired shares in the company. There was a marked difference between Mr. Berezovsky's active involvement and participation in the former, and his apparent indifference to the latter acquisitions, which is difficult to comprehend if indeed the deal between him and Mr. Abramovich was that Mr. Berezovsky (together with Mr. Patarkatsishvili) were to acquire Sibneft shares in partnership with Mr. Abramovich. Mr. Berezovsky's evidence was that he played no part in the subsequent auctions and did not need to do so, because Mr. Abramovich was organising everything. But that hardly explained Mr. Berezovsky's lack of interest in the result of the auctions if he personally was indeed acquiring an interest in any Sibneft shares acquired as a result of the auction process.

261. What was particularly surprising (if Mr. Berezovsky's account were the correct one) was that the parties had agreed that a joint-venture vehicle, namely NFK, should be used for the purposes of the loans-for-shares auction, (i.e. for the purpose of obtaining management control) but that, in relation to the first privatisation auction which took place just one week later, in January 1996, Mr. Abramovich's company, Runicom, was the purchaser of 12% of the 15% of Sibneft shares sold. According to Mr. Berezovsky's case, at this stage – i.e. late 1995 early 1996 - there were no arrangements in place (under the terms of the alleged 1995 Agreement) for his stake to be held for him indirectly via Mr. Abramovich or one of his companies; it was only in May or June 1996 that such an agreement (the alleged 1996 Agreement) was made.

262. In such circumstances, if it had been agreed that Mr. Berezovsky and Mr. Patarkatsishvili were indeed meant to obtain a partnership interest in 50% of any Sibneft shares acquired by Mr. Abramovich, it was surprising that the joint-venture vehicle, NFK, or some other 50:50 vehicle, was not used for such acquisition. At the least, one might have expected Mr. Berezovsky and Mr. Patarkatsishvili to have

raised some point with Mr. Abramovich as to what price was going to be paid for any Sibneft shares which the three partners were to acquire, how "their" Sibneft shares were going to be paid for, and how they were going to be held on their behalf, and to have expressed some interest in the outcome of the auction.

263. Mr. Berezovsky's explanation that he left the conduct and the financing of the share auctions, on their behalf, to Mr. Abramovich to arrange as the person charged with the management of Sibneft under the alleged 1995 Agreement was not convincing. At one stage Mr. Berezovsky insisted that Mr. Abramovich had to make a bid and that he, Mr. Abramovich, could decide on the bid price, but that the latter could come to Mr. Berezovsky if he was in difficulties. Yet there did not appear to have been any obligation on Mr. Berezovsky and Mr. Patarkatsishvili to pay for any Sibneft shares acquired by Mr. Abramovich; none was pleaded or referred to in Mr. Berezovsky's witness statements.

264. At another stage Mr. Berezovsky suggested that it was up to Mr. Abramovich, in the exercise of his powers of management, to meet Mr. Berezovsky's proportion of the cost of acquiring Sibneft shares by setting it off against his share of Sibneft profits[118]. At yet another stage, Mr. Berezovsky relied on a new formulation of the agreement that "we just agreed that all expenses" would be shared.

265. But not only did the evidence show that, at the relevant times, there were no Sibneft profits available which could be applied to paying for Mr. Berezovsky's share of the purchase price, but also, as was common ground, what was actually agreed in 1995 was that Mr. Abramovich and his team would run Sibneft after management control had been acquired. As was submitted on Mr. Abramovich's behalf, it is not normally part of the function of a company's manager to purchase shares in that company on behalf of potential investors or to pay for them out of distributions, even on the footing that there are distributions available for that purpose.

266. In addition to the above points, in support of his contention that the evidence relating to the acquisition of the Sibneft shares in 1996 and 1997, and the manner in which they were held thereafter, supported his case in relation to the alleged 1995 Agreement, Mr. Berezovsky sought to rely upon:

i) his undoubted and invaluable contribution to the success of the loans-for-shares auction, which he alleged went well beyond the mere provision of *krysha*;

ii) the fact that security for a number of the loans made by SBS to Runicom had been secured by means of cash counter-deposits from Sibneft group companies (such as Omsk Oil) and that in effect he was equally entitled to the utilisation of such sums, as Mr. Abramovich, since the availability of such funds was the direct result of the three partners' efforts in 1995;

iii) that Mr. Abramovich and his companies had in cash terms only provided a total of just $18.8 million in return for obtaining approximately 90% of Sibneft;

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[118] Berezovsky Day 4, pages 172-173; Day 5, page 2; Day 5, page 96; Day 5, page 103; Day 5, pages 108-109; Day 5, page 116; Berezovsky Day 4, page 169-176.

iv) the fact that Mr. Berezovsky did have an ownership stake as co-founder in PK-Trast, the 49.9% shareholder in FirmaSins, the vehicle used to purchase 19% of Sibneft shares in the second cash auction held in September 1996.

267. I found none of these points persuasive. Dealing with them in turn:

i) His considerable efforts which contributed to the success of NFK's acquisition of management control of Sibneft as a result of the loans-for-shares auction was in my judgment far more characteristic of a relationship between protector and client, than one between investor and manager. I have set out my conclusions above as to the role played by Mr. Berezovsky in this respect. The use which was made of his contacts with SBS and Bank Menatep, and the political influence which he exercised behind the scenes, again was wholly consistent with a *krysha*-type relationship. His non-participation in the arrangements for the bids made at the subsequent share auctions at which the Sibneft shares were acquired, and his indifference to what was going on in relation to such acquisitions, is likewise wholly explicable in a situation where Mr. Berezovsky was providing political patronage for cash. It is not explicable if Mr. Berezovsky was himself acquiring a partnership interest in such assets. His constant refrain that his priorities at the relevant time were ORT and the forthcoming presidential election was not convincing; such priorities were not a reason why he (or, at least, his in-house advisers, on his behalf) would not have been interested, at least, in the number of Sibneft shares that had been acquired, the cost of such acquisition and the manner in which they were held upon his and Mr. Patarkatsishvili's behalf.

ii) In my judgment the fact that security for a number of the loans made by SBS to Runicom had been secured by means of cash counter-deposits from Sibneft group companies (such as Omsk Oil) was not circumstantial evidence that supported Mr. Berezovsky's case as to the terms of the alleged 1995 Agreement. I have already expressed my view above that the availability of such funds was not "the direct result of the three partners' efforts in 1995". Mr. Berezovsky's initial exercise of political influence had created the opportunity for Mr. Abramovich; but it was Mr. Abramovich who exploited that opportunity, by thereafter buying Sibneft shares and utilising Sibneft's subsidiaries' own cash deposits to secure the financing, or, possibly[119], to provide the finance for the various share acquisitions. Whatever may, or may not, have been the commercial propriety of such a course, such utilisation does not support Mr. Berezovsky's case as to the alleged 1995 Agreement. Even on his case, neither he nor Mr. Abramovich had any beneficial interest in such monies. There was no evidence to suggest that they represented distributable profits of Sibneft.

iii) Nor did the fact that Mr. Abramovich and his companies had in cash terms provided a total of only $18.8 million (or possibly more) support Mr. Berezovsky's version of events. Mr. Berezovsky and Mr. Patarkatsishvili

[119] It was not clear from the evidence whether the Sibneft subsidiaries merely provided cash collateral by way of security for the various SBS loans raised to fund the purchases of Sibneft shares, or whether their funds were actually used to discharge the loans. I assume - in Mr. Berezovsky's favour – the latter.

paid nothing towards the acquisition of Sibneft shares, nor, unlike Mr. Abramovich, were any of their companies exposed to commercial risk.

iv) I have dealt with the evidence relating to PK-Trast, the 49.9% shareholder in FirmaSins. Whilst the fact that Mr. Abramovich considered it desirable to nominate Mr. Berezovsky as a founder shareholder of PK-Trast did, to a limited extent, support Mr. Berezovsky's case, it was hardly a significant feature. Indeed the point did not feature in his written closing.

268. Accordingly, I conclude that the evidence relating to the acquisition of the Sibneft shares in 1996 and 1997, and the manner in which the shares were subsequently held, coupled with the absence of any evidence (or a pleaded allegation) that Mr. Abramovich was obliged under the terms of the alleged 1995 Agreement to buy shares for Mr. Berezovsky and Mr. Patarkatsishvili in the subsequent auctions of Sibneft shares, supports Mr. Abramovich's case that he was acquiring such shares on his own behalf and at his own expense and does not support Mr. Berezovsky's case of an alleged partnership agreement under which he and Mr. Patarkatsishvili would be entitled to 50% of all shares acquired in Sibneft.

iii) The timing of the arrangements between the parties

269. The essence of the dispute about timing between the parties was as follows. Mr. Berezovsky's case was that the three men were partners and that they agreed the partnership in July or August 1995, after working together for many months; and that is was in July or August 1995 "… when they agreed that they would split their interests in Sibneft 50:50"[120]. By contrast, Mr. Abramovich's case was that the basic features of his arrangements with Mr. Berezovsky had been substantially agreed in February 1995, and in any event, by March 1995, when Mr. Berezovsky said that he would expect $30 million a year. Mr. Abramovich accepted that, thereafter, as the project developed, and the government legislation opened new opportunities, the assistance that Mr. Berezovsky agreed that he would provide extended into helping Mr. Abramovich in obtaining management control through the loans-for-shares auction.

270. Mr. Rabinowitz submitted that it would have been extremely unlikely for Mr. Abramovich, in February/March 1995, at a time when he barely knew Mr. Berezovsky, and when the value of Mr. Berezovsky's future contribution was wholly unknown, to have agreed that, in return for Mr. Berezovsky's assistance, Mr. Abramovich would pay Mr. Berezovsky unlimited sums depending entirely on Mr. Berezovsky's demands. He also submitted, that it would have been "bizarre" for Mr. Abramovich to have agreed in February/March 1995 to make a payment, in that first year, to Mr. Berezovsky of $30 million, given that such sum represented 75 percent of Mr. Abramovich's oil trading profits of $40 million for the previous year.

271. Mr. Sumption submitted that, on the contrary, Mr. Abramovich's account of the understanding reached in 1995 was supported by the fact that the timing was more consistent with his version than any other. In support of this contention he submitted:

i) Mr. Abramovich's version was consistent with

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120 See Day 41, page 81.

a) Mr. Berezovsky's evidence that from early 1995 it "was accepted" that they would be partners[121];

b) the fact that both of them were actively engaged on the project from January 1995, and Mr. Berezovsky was lobbying the government by February at the latest[122]; and

c) the evidence of Mr. Abramovich and his employee, Ms. Goncharova, (denied by Mr. Berezovsky) that the first payment was made to Mr. Berezovsky in about February 1995, with further payments in the following months.

ii) A comprehensive agreement of the kind alleged by Mr. Berezovsky, regulating the parties' rights as owners of Sibneft, is unlikely to have been reached by August 1995, let alone by February or March 1995. The situation was too fluid for that, since:

a) Sibneft was not created until the Presidential decree of 24 August 1995. The decree provided for the State to retain at least 51% of the company for at least three years. But the privatisation of the other 49% was not approved until 29 September 1995.

b) The loans-for-shares scheme was not proposed until the end of March 1995, when Mr. Vladimir Potanin, then head of Oneksimbank and later first deputy Prime Minister, made an offer on behalf of a consortium of banks to lend money to the Russian government secured on State holdings in leading Russian companies. The proposal was not formally adopted until 31 August 1995, with the issue of Presidential Decree No. 889 "On Pledging Federally Owned Shares". Sibneft was not initially included in it. It was added to the scheme on 27 November 1995, as I have already mentioned.

iii) Mr. Abramovich's evidence was that his understanding was with Mr. Berezovsky only, although he appreciated that Mr. Patarkatsishvili was a close associate of Mr. Berezovsky. Mr. Berezovsky's evidence was that the parties to the agreement were not just Mr. Abramovich and Mr. Berezovsky, but also Mr. Patarkatsishvili, who, Mr. Berezovsky asserted, was present when the initial agreement was made[123], and that some of the terms alleged by him make sense only on that footing[124]. In the main Chancery proceedings his case (verified by a statement of truth) was that his partnership with Mr. Patarkatsishvili dated only from August 1995[125].

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121 Berezovsky 4th witness statement, paragraph 95; Berezovsky Day 4, page 147.

122 Berezovsky Day 4, pages 142-143. As Mr. Berezovsky said, "I think I start immediately": Berezovsky Day 4, page 143.

123 See, for example, Day 4 pages 148-153.

124 For example, the allegation that the alleged ownership interest was held "50% for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili".

125 See in particular, Mr. Berezovsky's response to a RFI from the Family Defendants in the Main Action, paragraph 1.2. Given that, on Mr. Berezovsky's own case, his alleged joint venture with Mr. Patarkatsishvili was not made until August 1995, it is difficult to see on what basis Mr. Berezovsky could allege, as he did in oral evidence, that he had told Mr. Abramovich about the alleged joint venture

272. I conclude that, to a certain extent, the arguments on timing support Mr. Abramovich's case.

273. There is force in Mr. Abramovich's submission that Mr. Berezovsky's active engagement on the project from early 1995, and in particular, his lobbying of the government from, at the latest, February, would have been unlikely to have taken place without some prior agreement as to his remuneration. Likewise, there is force in Mr. Abramovich's submission that the first payment made to Mr. Berezovsky in about February 1995, and the further payments in the following months of 1995, (which, as set out below, I conclude were indeed made), were, similarly, unlikely to have been made in the absence of some prior agreement. At that stage, no profits were being generated that could be said to be attributable, directly or otherwise, to any interest in Sibneft, however widely the term "profits" might be defined.

274. On the other hand, the fact that Mr. Berezovsky's alleged partnership with Mr. Patarkatsishvili was claimed to have dated only from August 1995 is consistent with Mr. Berezovsky's case that the alleged 1995 Agreement was concluded in August 1995.

275. But I am not persuaded by Mr. Rabinowitz's submissions as to the unlikelihood of Mr. Abramovich agreeing in February/March 2005 to pay Mr. Berezovsky $30 million in the first year, notwithstanding that, at that stage, Mr. Berezovsky had not demonstrated that he could achieve anything concrete, and that he was not personally well known to Mr. Abramovich. Mr. Abramovich's evidence was convincing on this point; there could be no realistic expectation of Mr. Berezovsky exerting his influence at the Kremlin without a prior commitment on Mr. Abramovich's part to remunerate him for that activity; Mr. Abramovich regarded Mr. Berezovsky's personal and political reputation and standing at that time as considerable; given the potential future revenues which Mr. Abramovich rightly believed he could generate by consolidating control over Omsk Oil Refinery and Noyabrskneftegaz, through the incorporation of Sibneft, and directing their sales through his Trading Companies, he would not have needed the track record of a prior business relationship to justify an agreement to pay large sums for Mr. Berezovsky's future assistance.

276. However, on both men's respective evidence: their discussions continued from January throughout 1995; they were both actively engaged from that date in the project; and the situation itself remained fluid and dynamic, given the development in the underlying legislative background.

277. Thus, none of the timing points relied upon by Mr. Sumption *per se* would have precluded the making of a further agreement, in August 1995, or indeed thereafter, in relation to any entitlement to Sibneft shares that might subsequently be acquired as a result of the loans-for-shares programme, or in the subsequent privatisation auctions, or in relation to an entitlement to participation in profits, as the underlying situation developed. I accept, of course, that this is not what was pleaded by Mr. Berezovsky. He did not suggest, for example, that the payments made from February 1995 and thereafter in that year were payments on account of anticipated profits from the

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with Mr. Patarkatsishvili "from the very beginning" when he returned from the Caribbean cruise: Berezovsky Day 6, page 130.

alleged joint venture. He simply denied that he had received them at all: at least in connection with his Sibneft arrangements with Mr. Abramovich.

278. In conclusion, whilst the timing arguments lend some support to Mr. Abramovich's defence, if I were otherwise satisfied as to the truth of Mr. Berezovsky's case, such points would not persuade me to find against him.

iv) The absence of any written record

279. It was submitted on behalf of Mr. Abramovich that, if an agreement had indeed been made in August 1995 in the terms alleged by Mr. Berezovsky, it would have been recorded in writing, whereas the absence of any written record of their arrangements strongly supported Mr. Abramovich's case that the nature of the arrangements between the two men had been based on a *krysha* type of relationship.

280. Mr. Berezovsky, on the other hand, alleged in his fourth witness statement that, in 1995, Mr. Abramovich had insisted that there should not be a written agreement, in case the Communists won the 1996 presidential election and took action against businesses with which Mr. Berezovsky was associated. Because it was such a critical part of Mr. Berezovsky's case, I set out his written evidence on the point[126]:

> "106 During the course of our discussions, Mr. Abramovich insisted that our agreement should not be written down. Mr. Abramovich said that this was because of my political involvement and my high-profile support for and relationship with President Yeltsin. In the event that President Yeltsin lost his re-election bid and the Communists returned to power (as many thought would happen), it was expected that I would be their first and foremost target. This was a commonly held view by those inside and outside of Russia. George Soros warned me that if the Communists were elected I would 'hang from a lamp post'. Mr. Abramovich said that I should distance myself from the company and that there should not be any papers linking me to it as otherwise this might harm Sibneft. Though the agreement between Mr. Abramovich, Badri and me was not written down, all parties to it were clear as to what their obligations were to their partners. There was no question in my mind that all three of us understood that we were binding ourselves to behave in accordance with our agreement. I am sure that we all understood that we were to treat each other in good faith as partners. I do not believe that it occurred to any of us that the force of our agreement, or the rights which we obtained, was affected by not having written it down. I am told that Mr. Abramovich has argued that the agreement between the three of us should have been in writing. I did not know that. I had at this point

[126] Berezovsky 4th witness statement, paragraph 106 *et seq*.

never been involved in any Russian court proceedings, and it did not occur to me that an agreement between three individuals such as ourselves needed to be in writing.

107 Whilst I realise that, from a Western perspective, it may seem unusual for businessmen to enter into undocumented agreements in respect of very significant assets, my arrangements with Mr. Abramovich should be viewed in their context:

(a) Mr. Abramovich and I had grown close while planning the formation and acquisition of Sibneft, and I was spending even more time with him than I was with Badri. I felt I was able to trust him in the same way I trusted my other close business associates, such as Badri.

(b) Additionally, such oral agreements were simply common practice at that time between Russians in Russia, where most business dealings at the level at which I operated necessarily placed a high emphasis on personal trust and on the mutual expectations of good faith between the parties (not least because the court system in Russia was an unreliable way of settling disputes, even if agreements were in writing). Further, in common with other Russian businessmen at the time, I was concerned that if documents fell into the wrong hands, they might be used abusively against my interests.

108. At that time, I conducted many of my business deals orally and am aware that other influential businessmen did too."

281. Mr. Abramovich denied the allegation that it was at his suggestion that nothing was recorded in writing. In his written evidence[127] he said as follows:

"35. In addition, if I had entered into an agreement such as that described by Mr. Berezovsky, I would have recorded it in writing. My usual practice at that time was to arrange for any acquired assets to be added to my holdings and, if there were partners in the project, to draw up legal agreements in writing in the form of shareholders' agreements, protocols or memoranda. Mr. Berezovsky seeks to excuse the lack of what would obviously be necessary documentation by making the false claim that I insisted that the

[127] Abramovich 4th witness statement, paragraph 35.

> agreement between us with regard to Sibneft and all other agreements remain in oral form (Berezovsky 4, paragraph 106). In fact, the only arrangement between us was in the nature of 'protection', and we did not discuss any formalising. By virtue of its non-legal nature, 'krysha' could not have been the subject of compulsory performance through a court petition. Mr. Berezovsky's claim that I did not want to formalise our relations in written form, since I was afraid of association with him, is contradicted by my particular efforts during this time to advertise my connection with Mr. Berezovsky and his patronage for my undertakings, including the future Sibneft, as I described in my previous statement. I had no use for Mr. Berezovsky's 'secret' patronage."

282. This evidence was not expressly challenged in cross-examination, although, since time did not permit either party to challenge each and every factual assertion in cross-examination, I assume that it was impliedly challenged.

Conclusion as to the absence of a written agreement

283. I find the absence of any written agreement or similar document recording the alleged 1995 Agreement, and the alleged 1996 Agreement, as highly surprising if agreements had indeed been concluded in the terms alleged by Mr. Berezovsky. I regard the absence of any written record, in the circumstances, as a significant factor supporting Mr. Abramovich's case and undermining that of Mr. Berezovsky.

284. My reasons for reaching the conclusion that it was inherently improbable that, if such an agreement had indeed been made, there would have been no written record of it, may be summarised as follows.

285. Whilst commercial oral agreements may have been less uncommon in Russia in the 1990s than they would have been, for example, in New York or London, the evidence did not suggest that they were the norm. Mr. Berezovsky himself at that time had made plenty of written agreements relating, for example, to Anros, LogoVAZ and ORT, even though some of these agreements were made with people, such as Mr. Glushkov, who were close and trusted associates of long-standing. As Dr. Nosova explained in her evidence, and as was confirmed by Mr. Berezovsky, the practice of denying unrecorded interests in joint ventures, referred to as "*kinut*" in Russian, was a well known hazard in Russia at the time.

286. Objectively, and even leaving aside the characters of the participants, I find it highly unlikely that, in Russia in 1995, there would be no formal written agreement, or even informal written record, of a joint venture or partnership agreement, whose subject matter was (according to Mr. Berezovsky):

    i) the acquisition in agreed proportions of an interest in, or entitlement to, shares in a substantial Russian oil company; and

ii) the acquisition of an interest, or entitlement to participate, not only in the profits of that oil company, but also in profits of another partner's existing trading companies, insofar as the profits of such companies were derived from acquisition of control of, or involvement with, the oil company; and whose terms included:

a) a right of first refusal in relation to any future business interests any of the three partners acquired, whether or not related to Sibneft, to be shared in the same proportions; and

b) a restriction on the sale of the shares held by the respective partners in the oil company without the consent of the other two partners.

The terms as alleged by Mr. Berezovsky were not only complex but also imposed considerable constraints on the future business activities of all three men, as a result of the restrictions on share transfers and the rights of first refusal in relation to new businesses. An agreement of this type on any sensible objective basis was far too complex to be dealt with by a purely oral agreement, even in a culture where purely oral agreements were more common than they are in the West. Any such joint venture agreement would have had to have contained detailed provisions addressing significant issues such as, for example: a definition of the profits, or revenues, of Mr. Abramovich's Trading Companies regarded as deriving from his acquisition of control of, or involvement with, Sibneft; management structures; composition of the board of directors; whether the restriction on transfers of shares without consent gave rise to pre-emption rights or obligations; whether, if a right to participate in a new business venture was exercised, what would be the required contribution of the respective partners towards financing and acquisition costs; and many other matters.

287. In paragraphs 524 - 528 of Mr. Berezovsky's written closing submissions, it was submitted that all such matters were addressed in the oral discussions between the parties. I do not accept that submission as a matter of fact, but in any event, what is highly surprising in this context is that, if they were indeed discussed orally, such complex matters were not reduced to writing. Moreover even on the assumption that, as Mr. Berezovsky contended, and Mr. Abramovich denied, it was correct as a matter of Russian law that, once the court was satisfied that a partnership or joint venture activity existed between the three men, it would be able to "fill in" any missing details in the terms of the agreement under its relevant default rules[128], there was nothing in the extensive expert evidence relating to Russian law that would suggest these would be easy matters for a court to determine, or that either man could be confident of a court upholding, a purely oral agreement. Indeed Mr. Berezovsky himself in his oral evidence recognised the difficulties of enforcement of an oral agreement in a Russian court.

288. As I have already explained, it was not part of Mr. Berezovsky's pleaded case that he was entitled to a share of anything other than the profits of Sibneft. As developed in his oral evidence, his case by the end of the trial was that it had been agreed that the parties would share in the relevant proportions:

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[128] See, for example, paragraph 523 of Mr. Berezovsky's written closing submissions.

> "… (a) any shares in Sibneft they might acquire, (b) all benefits generated by reason of Sibneft (whether received through the Trading Companies or otherwise), and (c) all losses and expenses of the joint venture. What was to be split was not gross revenues but profit.

289. As Mr. Berezovsky explained, "… everything what generate Sibneft and everything what generate connected to Sibneft, from the Sibneft activity, belong to us together". It did not matter whether the profit was made by Sibneft itself or by Mr. Abramovich's Trading Companies: if it derived from the control of Sibneft or the parties' joint activity, then it was to be shared[129].

290. But, contrary to Mr. Rabinowitz's submission[130], the suggestion that participation extended to include profits made by Mr. Abramovich's Trading Companies, at least to the extent that such profits derived from Mr. Abramovich's acquisition of control, or involvement with, Sibneft would have given rise to real uncertainty as to the scope and definition of what was included in the alleged partnership: not merely as to the identification of the relevant Trading Companies, but also as to the identification of the relevant revenues, expenses and profits, and the methodology for computing and auditing relevant profits. Likewise, the other alleged terms of the agreement, as suggested by Mr. Berezovsky in his evidence: for example:

i) that it was "agreed" that Mr. Abramovich was "… responsible for deciding how the share acquisitions should be organised"[131];

ii) that it was agreed that "Mr. Abramovich would manage Sibneft", and:

> "… would decide in consultation with Mr. Patarkatsishvili what profits from control of Sibneft were free for sharing among the partners, and what profit should be retained or reinvested in the business"[132];

iii) that no partner could sell their interest in the partnership without the consent of the others; and

iv) that there was a right of first refusal on future investment projects.

All would have required detailed provisions governing their operation.

291. Moreover, I find it inconceivable that, if there had been such an agreement as alleged by Mr. Berezovsky, Mr. Abramovich, advised as he was by Mr. Shvidler, would not have insisted on a properly drawn up commercial agreement recording the terms of the three men's "partnership". The consequences of such an agreement for his future business activities would have been so swingeing, given, for example, the alleged obligation to provide a 50% participation to Mr. Berezovsky/Mr. Patarkatsishvili in every new venture, and the constraints upon dealing with the Sibneft shares, that it is inherently unlikely that he would have agreed to such a proposal without a written

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129 See paragraph 524 (4) *ibid*.
130 See paragraph 527 *ibid*.
131 See paragraph 524(5) of Mr. Berezovsky's written closing submissions.
132 See, for example, paragraph 524(6) of Mr. Berezovsky's written closing submissions.

record clearly setting out the conditions (for example as to timing of the exercise of the rights, and the provision of capital) attaching to such rights of first refusal and the other constraints on his ability to deal with his assets.

292. As a witness, Mr. Abramovich presented as a man with a keen requirement for detail, certainty and precision of expression. In my judgment, he was the last man one would have supposed to have been content to have such an agreement left in the limbo of oral recollection. I find it difficult to believe that he would have had a different approach in 1995.

293. From the perspective of Mr. Berezovsky, the absence of a written agreement was particularly striking in the circumstances prevailing in 1995. At that stage, Mr. Berezovsky had only just met Mr. Abramovich, a man of whom he had never previously heard and whom he says he regarded as someone with no significant track record in business. Indeed, as I have already mentioned, in the early part of his evidence in cross-examination Mr. Berezovsky spoke of Mr. Abramovich's abilities with some degree of contempt. The two men had never done a deal together before. I did not find Mr. Berezovsky's evidence that by August 1995 he trusted Mr. Abramovich so implicitly, there was no need to have any written agreement, as remotely plausible. On Mr. Berezovsky's hypothesis, Mr. Abramovich was being trusted not only to run a multimillion dollar oil business in which Mr. Berezovsky and Mr. Patarkatsishvili owned a 50% share, but also to hold the two men's ownership interests on their behalf, in a manner that was never made clear to them. Mr. Berezovsky's lack of concern with the detail of his financial affairs and the fact that at that date he was concentrating on the re-election of Mr. Yeltsin, provided no satisfactory explanation for the absence of a written agreement.

294. On the other hand, if the true nature of the arrangement was a political arrangement, that is to say, a trade in influence and protection, in return for payment of large sums of money, as opposed to an oil industry partnership, it is readily understandable that both men, and particularly a person in Mr. Berezovsky's position, would not have wanted there to have been anything recorded in writing. As was submitted in Mr. Abramovich's written closing submissions[133]:

> "Such an arrangement would have been simple enough for a document to be unnecessary, and embarrassing enough for it to be undesirable. It is hardly conceivable that the parties could have intended that an understanding which it is common ground required Mr. Berezovsky to use his influence over the President to his own financial advantage and that of Mr. Abramovich, should have been intended as a binding agreement on which recourse might be had to the Russian courts in case of dispute. It is obvious that the arrangement was intended to be binding in honour, not in law."

I regard that submission as compelling.

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133 See paragraph 29.

Mr. Berezovsky's claim that it was at Mr. Abramovich's insistence that there was no written agreement

295. I reject Mr. Berezovsky's evidence to the effect that it was Mr. Abramovich who had insisted that the agreement should not be recorded in writing. In cross-examination he initially appeared confused as to whether any such stipulation had been made, and then appeared to suggest Mr. Abramovich's insistence had come in 1996 at the time of the alleged 1996 Agreement. But even if one attributes his muddled evidence on this topic to an understandable difficulty in recollection, given the passage of time, and even making full allowances for that fact, I still had real difficulty in accepting his evidence.

296. First, the allegation was not included among the reasons given for the absence of a written agreement in Mr. Berezovsky's second witness statement, prepared for use in the summary judgment proceedings, although he claimed in that statement to have a "clear recollection" of what was said. The suggestion that a written record was dispensed with at the request of Mr. Abramovich was first made in the Re-Amended Reply, served in July 2010[134] (on any basis somewhat late in the day), a factor which does not reinforce its credibility. Second, the reason given by Mr. Berezovsky for Mr. Abramovich's "insistence" on there being no written record was very difficult to follow. He appeared to be saying that any written agreement would reveal to the Communists, if they came into power, that he was associated with the company, and that, as a result, they would be more likely to re-nationalise Sibneft, than if merely Mr. Abramovich appeared to be associated with the company. But the evidence showed that the declared policy of the Communists at the time was to retain the business assets of the State and to renationalise all those which had been previously privatised. Thus, if the Communists came to power, the likelihood was that any project for acquiring shares in Sibneft would have been doomed, whether Mr. Berezovsky was associated with it or not, and irrespective of whether there was any agreement in writing. Third, the reality was that Mr. Berezovsky *was* publicly associated with NFK at the time of the Sibneft loans-for-shares auction of 28 December 1995, and Mr. Abramovich's evidence was that, far from keeping Mr. Berezovsky's association hidden, he regarded Mr. Berezovsky's association with the project as a political asset which he wanted to advertise, because Mr. Berezovsky was known to have the ear of President Yeltsin. Mr. Berezovsky himself admitted in cross-examination that everybody knew that he was connected with NFK which managed Sibneft, but said that "… not everything is absolutely logical, we should understand, and my behaviour … also was not very logical sometimes"[135]. This undermines the suggestion that the two men thought that confidentiality about Mr. Berezovsky's association was either possible or necessary, or likely to assist in dealing with the Communists, such as to explain the absence of a written record of the agreement.

v) Mr. Berezovsky's purpose at the time of the alleged 1995 Agreement

297. The evidence showed that Mr. Berezovsky's main priority in 1995 was to ensure that, as a matter of urgency, ORT was adequately funded so that it could give effective support to President Yeltsin's campaign. The driver behind Mr. Berezovsky's

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134 Re-re-re-Amended Reply, paragraph R34.1(11).

135 Berezovsky, Day 5, page 47.

agreement in 1995 to assist Mr. Abramovich to acquire control of Sibneft, as explained to Mr. Abramovich (and indeed as acknowledged by Mr. Berezovsky), was to generate a source of funds for ORT[136]. Moreover, this was the basis on which the proposal was put to President Yeltsin. According to Mr. Berezovsky:

> "The main way in which I was able to persuade President Yeltsin and the government to agree to the creation of Sibneft was by emphasising the importance of ORT for the re-election of President Yeltsin in the following presidential elections, and the need to secure a new business venture which could provide the funding to support ORT. … I discussed with President Yeltsin ORT's support of the democratic reforms in the upcoming election. I explained that ORT continued to be loss-making and short of funds and said that alternative funding would have to be found in order for ORT to maintain its influence and stage a strong television campaign in favour of the re-election of Mr. Yeltsin, a democratic candidate against the communists[137]."

298. When this passage was put to him in cross-examination, Mr. Berezovsky gave the following evidence[138]:

> "A. It is correct.
>
> Q. So your argument was: in order to fund ORT and support the president's re-election campaign, I need to have these two Siberian businesses separated from Rosneft and partially privatised so that I can use them as a source of funds for financing ORT's operations. That was the argument, wasn't it?
>
> A. It was the argument.
>
> Q. And it was the argument that succeeded, wasn't it?
>
> A. It was succeeded.
>
> Q. Now, the deal therefore, in summary, that you made with Boris Yeltsin was this, wasn't it: "You, Mr. President, get the support of my television network and I get put in a position where I can extract large sums of money from these two Siberian businesses"? That's the deal, isn't it?
>
> A. It's correct."

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136 At a later stage, however, I conclude that his concern became the funding of his own personal expenditure, rather than that of ORT.

137 Berezovsky 4th witness statement, paragraphs 111, 115, and cf. paragraphs 117-119, 153.

138 Day 4, pages 42-43.

299. Mr. Sumption submitted that ownership of Sibneft shares, with a consequent participation in Sibneft profits, would not have helped Mr. Berezovsky in 1995 to fund ORT, and would not therefore have achieved what Mr. Berezovsky's own evidence shows to have been his main purpose in joining up with Mr. Abramovich; whereas, on the contrary, a *krysha* type arrangement with Mr. Abramovich would, and in fact did, enable Mr. Berezovsky to make an immediate and significant contribution to ORT's funding shortfall.

300. In support of this submission Mr. Sumption put forward the following arguments:

i) Since the elections were due in June 1996, Mr. Berezovsky needed to find a source of funding for ORT as a matter of some urgency[139]. ORT was found, when Mr. Berezovsky took control of it, to have a much larger funding shortfall than had previously been expected, in the region of $200 million a year. The other private investors, who had joined Mr. Berezovsky in acquiring the 49% stake in ORT, were unwilling or unable to put their hands in their pockets to fund the shortfall. LogoVAZ could make only a minor contribution to filling this gap, as Dr. Dubov explained to Mr. Berezovsky at the time. Mr. Berezovsky made various unsuccessful attempts to borrow the money from commercial banks.

ii) The acquisition of ownership of, or an interest in, Sibneft shares, would not have achieved the purpose of providing immediate funding for ORT. Mr. Berezovsky needed money to fund ORT much more quickly than he could ever have obtained such funding out of Sibneft dividends. In the first place, it would have taken time for the necessary legislation to be passed creating Sibneft, and for management control to be acquired. In the event, Mr. Abramovich did not acquire control of Sibneft until the beginning of 1996, just six months before the elections. Secondly, the component businesses of Sibneft were old-style Soviet State enterprises, which had never been exposed to market disciplines and were then making substantial losses. They would have to be fused into a single business, and then turned round. Mr. Berezovsky's assertion that it would have been perfectly straightforward to have integrated the component businesses of the two Siberian companies into one, with the old-style Soviet management and their billion dollars of accumulated debt, and that large sums of money from the combined businesses could have been extracted as soon as Mr. Abramovich acquired management control, was absurd, and was given from the standpoint of complete ignorance of the industry. Mr. Berezovsky admitted that at the time when he needed funding for ORT, "Sibneft was not profitable". He confirmed that even in 1996 Sibneft also made no profits. In the event profits were not made until 1997. Even then they were on a modest scale and had to be retained for investment in order to grow the business. Significant profits were not made by Sibneft until 1999, and no dividend was paid until 2000. Since the reward for Mr. Berezovsky's efforts was required straight away in order to fund ORT, he could not possibly have stipulated for a form of reward that, even on his own evidence, might take months to arrive and, in fact, took years to arrive. By comparison, by exacting payments from Mr. Abramovich in early 1995, and thereafter, in return for the *krysha* he and Mr. Patarkatsishvili provided,

[139] Berezovsky Day 5, page 10; Day 5, page 11.

Mr. Berezovsky was in a position to, and did, make an immediate and significant contribution to ORT's funding shortfall. This funding was worth far more than a share of the modest profits which Sibneft was likely to make in the early years after Mr. Abramovich acquired control of it. It was hardly conceivable that Mr. Berezovsky was not aware of this.

iii) Notwithstanding that, by his own admission, he knew nothing about the internal business affairs of Sibneft or its terms of trade with those to whom it sold oil, Mr. Berezovsky suggested that "everybody knew" that the actual profits of oil companies were much higher than their declared profits, because of what he says was the universal practice of exporting profits out of the companies by charging artificial transfer prices to connected entities[140]. But this factor cannot have entered into Mr. Berezovsky's calculations at the time of the agreement in 1995, for the following reasons:

a) He said that he did not appreciate the significance or widespread character of what he calls "transfer pricing" until the trial of Mr. Khodorkovsky in 2003[141]. At the time, as he acknowledged in his oral evidence, he never knew how Mr. Abramovich operated and generated profit because he did not pay any attention to that[142].

b) Until he was cross-examined, he had not suggested that he was entitled to the profits of any company other than Sibneft.

c) It was no part of Mr. Berezovsky's pleaded case that Mr. Abramovich was bound under the terms of the alleged 1995 Agreement to pay him any money in excess of the ordinary profit distributions of Sibneft which were payable rateably to its shareholders generally. It follows that, if Mr. Berezovsky made the agreement that he claims in his Re-Re-Re-Amended Particulars of Claim he made, then Mr. Abramovich could have paid him nothing for a considerable time, in the event until November 2000. The only plausible explanation of the fact that Mr. Abramovich paid him more than he was bound to pay is that he was not paying under a legal obligation, but for *krysha*.

iv) It was difficult to accept that Mr. Berezovsky was unaware of these issues at the time. The fact that he initially demanded $30 million a year, and called for the first payments in early 1995, reinforced the point. Mr. Berezovsky accepted in his oral evidence that, whilst he could not recall having discussed the figure of $30 million, he could not exclude the possibility that he had.

301. On the other hand, Mr. Rabinowitz, on behalf of Mr. Berezovsky, submitted as follows in relation to Mr. Berezovsky's purposes in 1995:

i) There was no reason for Mr. Berezovsky:

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140 Berezovsky Day 5, page 117; Day 5, page 119. Mr. Berezovsky boldly asserted that "… in very short time all oil companies become super-profitable" Day 5, page 13, and that one did not need to be Seneca to understand how it worked: Berezovsky Day 5, page 17.

141 Berezovsky Day 5, page 121; Day 6, page 32.

142 Berezovsky Day 6, pages 34-35.

> "… not to enter into a partnership agreement with Mr. Abramovich under which they would share ownership of shares acquired in Sibneft, and the profits of ownership and control"[143].

ii) Mr. Berezovsky's contentions about the agreement between himself and Mr. Abramovich were entirely characteristic of the way that the loans-for-shares scheme was known to have operated in other cases, where the individual with the political influence to secure the privatisation and acquisition of the particular company concerned, invariably took an interest in the company; examples were Mr. Khodorkovsky in respect of Yukos and Mr. Potanin in respect of Norilsk Nickel and Sidanco. Whereas Mr. Abramovich's case, on the other hand, postulated that:

> "… the acquisition of Sibneft was a unique instance unlike any other loans-for-shares deal, in which control of the company was acquired solely by an individual (Mr. Abramovich) who did not have the political connections to secure the privatisation and acquisition himself, was not either an oligarch or a Red Director of Sibneft, and relied for political support on another individual (Mr. Berezovsky) who, uniquely, elected to take no interest in the company he was expected to secure. Mr. Abramovich also contends that the Sibneft acquisition was unique in that the group which controlled the lender under the loans-for-shares auction (Messrs Abramovich, Berezovsky and Patarkatsishvili) did not acquire ownership of those shares when they were sold, but allowed them to pass to Mr. Abramovich alone."[144]

iii) Mr. Sumption's argument that a partnership agreement of the kind alleged by Mr. Berezovsky would not in fact have served Mr. Berezovsky's purposes, namely to generate cash, because Sibneft itself did not make profits for some years was no more than a "rehash" of the ill-founded pleading point that the partnership alleged by Mr. Berezovsky should be treated as one that limited Mr. Berezovsky to an entitlement to share in the profits of Sibneft rather than in those "profits generated by the partners thanks to their control of Sibneft, which is what the agreement was really about[145]".

iv) Mr. Berezovsky knew full well that Mr. Abramovich had the potential to make money out of Sibneft between 1996 and 2000, wholly separately from (and in excess of) the declared profits of Sibneft. Mr. Abramovich's own evidence was:

> "I explained that there was the potential to make a lot of money by consolidating control over these companies and directing their sales through my Trading Companies …. Although I gathered from our conversation that Mr. Berezovsky knew little

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143 See paragraph 374 (3) of Mr. Berezovsky's written closing submissions.
144 See paragraph 279 (2) of Mr. Berezovsky's written opening.
145 See Mr. Rabinowitz's oral closing submissions at Day 41, page 94.

about the oil industry, he was clearly excited by the prospect of a business which had excellent potential for the creation of substantial and regular cash flows" [146].

v) This supported Mr. Berezovsky's contention that his purpose was to obtain a partnership interest, not merely in Sibneft dividends, but in the profits generated by Mr. Abramovich's Trading Companies, as a result of Mr. Abramovich's control of, or involvement with, Sibneft.

Conclusions in relation to Mr. Berezovsky's purpose

302. My conclusions in relation to this issue are as follows:

i) What occurred in relation to other major State-owned industrial businesses included in the loans-for-shares scheme, or which were otherwise privatised at about the same time[147], is of very little assistance in my determination of this case. Not only were the facts relating to each case very different, but also it is impossible to predicate, from the limited information available in relation to such transactions, that the terms governing Mr. Abramovich's and Mr. Berezovsky's arrangements were, or were likely, to be the same. It was not possible to draw useful parallels between the three other cases relied upon by Mr. Berezovsky, where oligarchs had acquired majority stakes in major industrial businesses; such comparisons as could be made were wholly inconclusive in relation to the issues which I have had to decide.

ii) There was nothing in the evidence to suggest that, in 1995, Mr. Berezovsky had any commercial interest in acquiring an ownership interest in what had been poorly performing State-owned companies, with large accumulated debts. He certainly had no interest in participating in any way in the management of Sibneft or in transforming its acquired businesses into profit-making ventures. On the contrary, on my analysis of the evidence, his interest and purpose in entering into the arrangements with Mr. Abramovich was to secure a future cash flow stream. That explains why he was interested in the amount that Mr. Abramovich's Trading Companies could generate and not in what might ultimately be the profits generated by Sibneft itself.

303. These findings support Mr. Abramovich's case, and undermine that of Mr. Berezovsky.

vii) The alleged 1996 Agreement

304. This topic is not strictly a topic of circumstantial evidence, since whether there was an agreement reached in 1996 in the terms alleged by Mr. Berezovsky in paragraph C37 of the Re-re-re-Amended Particulars of Claim is one of the defined issues in the Agreed List of Issues. However, it is convenient, chronologically and logically, to deal with it at this stage.

305. Mr. Berezovsky's case was that between March and June 1996, Mr. Abramovich made clear to him that he felt very strongly that Mr. Berezovsky should distance

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146 Abramovich 3rd witness statement paragraph 53.

147 For example, as described in Professor Fortescue's evidence.

himself from Sibneft, because Mr. Berezovsky was so involved in politics and that he and Mr. Patarkatsishvili should be secret partners, without their names appearing on any documents relating to ownership of Sibneft. Mr. Berezovsky says that he agreed to this on the terms set out in paragraph C37, namely

i) Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would arrange matters so that Mr. Abramovich, or his companies, was the legal owner of all the Sibneft shares which had been acquired prior to the 1995 Agreement;

ii) Mr. Berezovsky and Mr. Patarkatsishvili would continue to have the rights and interests which they had acquired pursuant to the 1995 Agreement in the shares that would be held by Mr. Abramovich;

iii) Mr. Abramovich would, upon request, transfer to Mr. Berezovsky and/or Mr. Patarkatsishvili shares equivalent to their interest in Sibneft on the basis of the percentage split referred to above;

iv) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to dividends and any other payments made by Sibneft to its owners on the basis of the percentage split referred to above;

v) thereafter any further acquisitions of Sibneft shares would be held on the same basis.

306. Mr. Rabinowitz submitted that Mr. Berezovsky's case was supported not only by Mr. Berezovsky's own evidence, but also by the following evidentiary materials:

i) the evidence of Mr. Patarkatsishvili, in particular as recorded in the proof of evidence recorded by Mr. McKim;

ii) the Le Bourget recording;

iii) the evidence of Mr. Khodorkovsky, who gave an interview consistent with the approach set out under the alleged 1996 Agreement (recognising Mr. Berezovsky's interest in Sibneft but declining to acknowledge that he owned a stake in it);

iv) the numerous public statements denying Mr. Berezovsky interests in Sibneft.

307. Mr. Rabinowitz further submitted that the rationale of the alleged 1996 Agreement strongly supported Mr. Berezovsky's case because, early in 1996, Mr. Berezovsky's public association with Sibneft presented a real threat to the business. He submitted that an analysis of the evidence showed that Mr. Abramovich was acutely aware of the potential risks of being seen to associate too closely with a person as politically active, and thus politically exposed, as Mr. Berezovsky.

308. In support of his arguments that there was a strong rationale for the making of the alleged 1996 Agreement, Mr. Rabinowitz referred to the following matters:

i) the fact that 1996 was a Presidential election year, a year in which Mr. Berezovsky was particularly closely involved in politics;

ii) the agreement of the historical experts to the propositions that:

a) Russian businesses were subject to substantial levels of political risk, both before and after the 1996 Presidential elections, and that the risks included attacks by local and national government agencies on businesses controlled by political rivals;

b) prominence, while it could bring benefits, could also subject individual businessmen to increased risks;

c) the fact that, in the volatile political situation of 1996, Mr. Abramovich could not be sure whether (even if President Yeltsin were re-elected) Mr. Berezovsky would end up as a friend or foe of the Kremlin. For example, President Yeltsin's *Midnight Diaries* showed just how realistic these fears were: they tell of the conflict, between the first and second round of elections, between President Yeltsin's two groups of supporters (the FSB supporters led by Mr. Korzhakov, and the "analytical group" of Mr. Berezovsky); Ms. Dyachenko protected Mr. Berezovsky, and President Yeltsin demanded Mr. Korzhakov's resignation. But, if this middle of the night stand-off had ended differently, Mr. Berezovsky could have become a political liability for Sibneft, even if President Yeltsin had nonetheless secured re-election.

309. On the other hand, Mr. Abramovich's case was that no distinct agreement had been made in 1996, and that Mr. Berezovsky's case in relation to the alleged 1996 Agreement had been devised when Mr. Berezovsky had persuaded himself that shares in Sibneft had originally been acquired and held by NFK (the successful bidder in the loans-for-shares auction, half of which was owned by Consolidated Bank).

310. In support of that contention, Mr. Sumption submitted that, on that basis, it was necessary for Mr. Berezovsky to explain how the Sibneft shares later came to be held by Mr. Abramovich's companies in a manner consistent with Mr. Berezovsky continuing to be interested in them. The alleged 1996 Agreement was devised to serve as this explanation. In what were referred to as the "re-drafted Particulars of Claim", as served on 8 January 2008[148], Mr. Berezovsky alleged that in 1996 there had been an agreement to transfer "his" and Mr. Patarkatsishvili's shares from his own companies to Mr. Abramovich's companies, to be held on trust for him and Mr. Patarkatsishvili. Mr. Sumption referred to paragraphs 35-38 of the Particulars of Claim which alleged:

> "35. This ownership interest in Sibneft was acquired in summary as follows:
>
> (1) The original issued share capital of Sibneft was 4,516,396,20 shares.
>
> (2) By Decree Number 972 of the Government of the Russian Federation, dated 29 September

[148] The original version of the Particulars of Claim was dated 6 September 2007, but it was not accepted for service by the Defendant, and it was agreed by the parties that the redrafted Particulars would be served on 8 January 2008.

1995, the Russian Government approved a privatisation plan whereby 51% of Sibneft's shares would be issued and transferred into state ownership for three years, and the remaining 49% of the shares would be sold by commercial tender at auction.

(3) By a Decree made on or around 30 October 1995, the Russian Government proposed to auction the right to enter into a 'Loans for Shares' agreement in respect of the 51% of Sibneft shares retained in state ownership, under which a creditor would loan money to the state and manage the state's shareholding, and at the end of a period of three years the share would, if the state failed to repay the loan, be transferred to the lender.

(4) A company owned and controlled by Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich, Neftyanaya Finansovaya Kompaniya ('Petroleum Financial Company') ('NFK'), made a bid of $100.3 million in conjunction with Stolichny Savings Bank, and this bid was announced as successful on 28 December 1995.

(5) The remaining 49% of the shares were sold by auctions commencing in January 1996. The majority of these shares were acquired by entities owned or controlled by Mr. Berezovsky, Mr. Patarkatsishvili and/or Mr. Abramovich.

(6) In May 1997, NFK transferred its rights to manage the shares to Finansovaya Neftyanaya Korporatsiya ('Financial Petroleum Corporation') ('FNK'), another company owned and controlled by Mr. Berezovsky, Mr. Patarkatsishvili, and Mr. Abramovich.

(7) In about October 1998, the State failed to repay the loan, and its 51% shareholding was transferred to FNK as envisaged in the Decree pleaded in subparagraph (3) above.

(8) On 16 December 1998, Sibneft issued another 224,093,389 shares to various minority shareholders of Sibneft's subsidiary companies.

(9) At all material times after December 1998, the share capital of Sibneft was 4,741,229,639 shares. Approximately 86% of the issued share capital had been acquired by entities on behalf of Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich."

The manner in which the shares were held

36. Initially, Mr. Berezovsky and Mr. Patarkatsishvili legally owned or controlled companies which controlled and legally owned their proportions of the Sibneft shares. However, as Mr. Berezovsky became more heavily involved in politics, and while Mr. Patarkatsishvili continued to manage the largest and most influential TV channel, ORT, it was decided and agreed between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich that Mr. Berezovsky and Mr. Patarkatsishvili would be distanced from the Sibneft business. Mr. Abramovich proposed that all shares held by Mr. Berezovsky and Mr. Patarkatsishvili should be transferred legally to him or to entities under his ownership or control.

37. It was orally agreed between the three by 1996 that:

(1) such a transfer would take place;

(2) Mr. Berezovsky and Mr. Patarkatsishvili would continue to beneficially own the shares so transferred, which would be held on trust for them by Mr. Abramovich;

(3) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to receive dividends and to any other payments made by Sibneft to its beneficial owners on the basis of the percentage split referred to above.

(4) thereafter any further acquisitions of Sibneft shares would be hold on the same basis.

38. By about August 1997, this agreement had been implemented and Mr. Berezovsky and Mr. Patarkatsishvili's shareholding had been transferred to and was legally owned or controlled by Mr. Abramovich or by companies owned or controlled by him, the beneficial ownership of that shareholding held on trust by Mr. Abramovich for Mr. Berezovsky and Mr. Patarkatsishvili in the agreed proportions set out at paragraph 34 above." [emphasis supplied]"

311. Accordingly, Mr. Sumption submitted, the assertion in the first sentence of paragraph 36 was inaccurate, because:

i) The Sibneft shares which were acquired through the cash auctions of the 49% of the company's share capital, and in the default auction relating to the 51%, had always been controlled by Mr. Abramovich's companies, and had never been legally owned by NFK.

ii) This remained Mr. Berezovsky's case until shortly before the strike-out application, in July 2009, by which time it had become clear:

a) that any alleged trust-type agreement would be governed by Russian law; and

b) that Russian law did not recognise the concept of a trust or a beneficial interest.

iii) In fact, as Mr. Berezovsky accepted, no shares in Sibneft were ever held by companies controlled by him or Mr. Patarkatsishvili. With this discovery, the alleged 1996 Agreement lost its entire commercial rationale, and became redundant. There was no need for Mr. Berezovsky and Mr. Patarkatsishvili to be "distanced" from Sibneft by having their shares held by Mr. Abramovich's companies, because all the shares that by 1996 had been sold (apart from a small number sold to other purchasers in the first private auction) had been held by Mr. Abramovich's companies from the outset.

iv) In response to the summary judgment application, Dr. Rachkov, Mr. Berezovsky's Russian law expert, came to his aid by suggesting that the representative capacity in which Mr. Abramovich was said to have held the shares under the alleged 1995 Agreement could be derived, notwithstanding the absence of any concept of trust in Russian law, from the terms of the alleged 1995 Agreement, by classifying the latter as a "joint activity" agreement, or a *sui generis* agreement in Russian law. Mr. Berezovsky then amended his account of the alleged 1996 Agreement, to remove any suggestion of original ownership or control on his part, and then transfer of, any shares. The difficulty for him was that, on the case currently pleaded, the alleged 1996 Agreement made no difference to the parties' relationship, as Mr. Berezovsky's written opening expressly acknowledged[149]. The only possible conclusion, submitted Mr. Sumption, was that Mr. Berezovsky had invented it in order to meet an imaginary difficulty, and persisted with it for the sole purpose of salvaging his credibility.

v) Even on the footing that the alleged 1996 Agreement changed something, the alleged rationale for the change made no sense, given the political circumstances prevailing in Russia in early 1996, and the fact that, even after the alleged 1996 Agreement, Mr. Berezovsky was not distanced from Sibneft. On the contrary, Mr. Abramovich sought publicly to associate Mr. Berezovsky with the company.

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[149] Mr. Berezovsky's written opening, paragraph 1059: the alleged 1996 Agreement "… made no difference to the substance of Mr. Berezovsky's rights".

Conclusion on the alleged 1996 Agreement

312. I have little or no hesitation in rejecting Mr. Berezovsky's case on the alleged 1996 Agreement. My reasons can be summarised as follows:

i) The evidence which Mr. Berezovsky gave in cross-examination in relation to the change of his pleaded case in relation to the alleged 1996 Agreement and the "transfer" of Sibneft shares legally "controlled and legally owned" by companies legally owned or controlled by Mr. Berezovsky and Mr. Patarkatsishvili was highly unsatisfactory. For example, the suggestion that it was his lawyers "… who change[d] the position", but that he "… never change[d] the facts"[150] was wholly unconvincing in circumstances where one of the original alleged terms of the alleged 1996 Agreement was an agreement to transfer specified shares, and Mr. Berezovsky was resiling from that allegation. Nor was his assertion that everything was left to Mr. Abramovich to "structurise", an adequate explanation for the changes to his pleaded case.

ii) Having heard the evidence, and reviewed the history of the various amendments to Mr. Berezovsky's case, it appears to me highly likely that the original pleading in relation to the alleged 1996 Agreement was indeed based on the mistaken assumption as to NFK's ownership of shares in Sibneft, and the subsequent amendments opportunistically crafted to reflect Dr. Rachkov's Russian law advice.

iii) It is difficult to see what rationale (political or otherwise) there might have been in early 1996 for the making of the alleged 1996 Agreement. If there was going to have been some such agreement along these lines, it is surprising that the point was not raised, or such an agreement reached in the context of the first cash auction, which opened on 1 November 1995 in relation to the privatisation of the first 15% tranche of Sibneft shares. In that auction, Runicom acquired a 12.2% shareholding. But, as I have already described, Mr. Berezovsky took no interest in that auction, nor in how "his" shares were going to be held.

iv) I accept Mr. Abramovich's evidence, as summarised in paragraph 111 of his 3rd witness statement that in early 1996, and for some time thereafter, he personally had no concerns about Mr. Berezovsky's being publicly associated with Sibneft. The fact that subsequently, in late 2000 and early 2001, Mr. Abramovich had come to view Mr. Berezovsky as a political risk, because of the latter's publicly made criticisms of Mr. Putin's governance, is no reason why he should have adopted such a stance earlier.

v) In fact, by the time that the alleged 1996 Agreement is supposed to have been made, it was common knowledge that Mr. Berezovsky was publicly associated with Sibneft, as he accepted in his evidence. Although he had no shareholding, he had taken a very public part in the loans-for-shares auction, on behalf of NFK; he had given press interviews on the results of the loans-for-shares scheme.

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150 Berezovsky Day 6, page 19.

vi) I was not persuaded by the other "wider" political points made by Mr. Rabinowitz, based on the expert evidence about political risk in Russia at the time. Whilst, no doubt, prominence or high profile of the type enjoyed by Mr. Berezovsky or other oligarchs might have exposed them to increased risk of attack from government, that was not, of itself, any reason in the circumstances for the making of the alleged 1996 Agreement.

vii) Nor was I impressed by the argument that there was a need to distance Mr. Berezovsky because of the risk that the Communists might win the next election. If that eventuality happened, it would have made little difference whether or not Mr. Berezovsky was publicly associated with Sibneft.

viii) The fact that, after the alleged 1996 Agreement, Mr. Berezovsky was not, in fact, distanced from Sibneft was also wholly inconsistent with his case. As I have already described, Mr. Abramovich made arrangements to have Mr. Berezovsky publicly associated with PK-Trast in advance of the second cash auction in September 1996; in the same month, Mr. Berezovsky was appointed to the board of Sibneft (resigning in December 1996, upon his appointment to the Security Council); in June 1997, Mr. Patarkatsishvili became a director of Sibneft, remaining on the board until 1999. I was not impressed with the suggestion in Mr. Berezovsky's evidence, that Mr. Berezovsky's appointment to the Sibneft board was designed to divert attention from his alleged shareholding. The appointment appeared to have the opposite effect, so far as contemporary press reports were concerned. Subsequently, in August 1997, Mr. Berezovsky's close association with the management of Sibneft was expressly referred to in the Saloman Brothers Eurobond circular for Sibneft, as described in greater detail below. In January 1998, Mr. Berezovsky appeared at the very public ceremony at the LogoVAZ Club, where the merger "heads of terms" between Sibneft and Yukos were signed, a fact which was also widely reported in the press.

ix) Whilst what is stated in paragraph 25 of Mr. McKim's proof of Mr. Patarkatsishvili's evidence dated 7 December 2007 offers *prima facie* support for Mr. Berezovsky's case in relation to the alleged 1996 Agreement, I attach little weight to such evidence, for the reasons set out below.

x) Likewise, I do not consider I am assisted by the Le Bourget transcript, or the various public statements denying Mr. Berezovsky's interests in Sibneft, or by the interview given by Mr. Khordorkovsky.

xi) The critical issue here is whether an oral agreement in the terms alleged by Mr. Berezovsky was made in early 1996. Ultimately, that depends on my assessment of the evidence given by Mr. Berezovsky and Mr. Abramovich about the matter, and their general credibility, albeit evaluated in context. I have no hesitation in preferring the evidence of Mr. Abramovich on this point. Even if, as Mr. Rabinowitz sought to argue[151], the alleged 1996 Agreement did affect the position of the parties, because they thereby agreed that the shares should be held in Mr. Abramovich's name, and such agreement therefore had

[151] See the commentary to paragraph 37 of Mr. Abramovich's written closing submissions, to be found on page 9 of Mr. Berezovsky's First Schedule.

some real, albeit limited, commercial function, Mr. Berezovsky's evidence in relation to the alleged 1996 Agreement was unimpressive.

313. It follows that I decide Agreed Issue 3 in the negative. There was no such agreement as alleged by Mr. Berezovsky.

(viii) The conduct of the parties between 1995 and 2000 (b): whether any payments were made to Mr. Berezovsky and/or Mr. Patarkatsishvili prior to 1996

(ix) The conduct of the parties between 1995 and 2000 (c): the nature of the payments of the payments made to Mr. Berezovsky and/or Mr. Patarkatsishvili between 1995 and 2000 and whether they were referable to 50% of (a) Sibneft's profits or (b) Sibneft's profits and profits generated indirectly through Mr. Abramovich's Trading Companies as a result of his acquisition of control of, or involvement with, Sibneft

314. I take these two topics together as, to a certain extent the relevant evidence is common to both.

315. Mr. Berezovsky's pleaded case is that it was agreed that he would "… be entitled to dividends and to any other payments made by Sibneft to its owners"[152]. As I have already explained, and contrary to Mr. Rabinowitz's submission[153], there was no pleaded case that one of the express terms of the alleged 1995 Agreement was to the effect that profits earned by Mr. Abramovich through other corporate entities, as a result of the latter's trading with Sibneft, or as a result of Mr. Abramovich having acquired control of, or involvement with, Sibneft, should be split 50:50. Likewise, Mr. Berezovsky's 4th witness statement did not suggest that there had been any agreement to share profits made by other corporate entities.

316. Again, as I have already explained, Mr. Berezovsky's oral evidence, however, was that it was expressly agreed that he (and Mr. Patarkatsishvili) would be entitled to all profits "in respect of our share of Sibneft", whether generated directly by Sibneft or indirectly through, or as the result of any trading connection between Mr. Abramovich's Trading Companies and, Sibneft. This was the way in which the case was formulated in Mr. Berezovsky's written and oral closing submissions: for example at paragraph 401 of Mr. Berezovsky's written closing, his evidence was summarised as follows:

> "Mr. Berezovsky made it clear that it was his understanding that his entitlement to Sibneft profits extended to profits derived from owning Sibneft, however and by whatever corporate vehicle Mr. Abramovich caused them to be earned."

317. Mr. Rabinowitz, in closing[154], submitted that there was nothing adverse to be inferred by the absence of any pleading of such an express term, since such a term would in any event be implied as a term of any Russian partnership agreement. I disagree. If indeed such a term was the subject of an express oral agreement under the terms of

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152 Re-re-re-Amended Particulars of Claim, paragraph C37(4). See also paragraph C34 and 34B where no broader allegation is made.

153 See the First Schedule to Mr. Berezovsky's written closing submissions; commentary on paragraph 19 (4) and 46 of Mr. Abramovich's written closing submissions.

154 See paragraph 401(3).

the alleged 1995 Agreement, I would have expected it to have been pleaded, or at the least referred to, in Mr. Berezovsky's principal witness statement for trial.

318. Mr. Berezovsky admitted in his oral evidence that he did not "know at all" what relation his payments bore to Sibneft's profits, or indeed the profits of Mr. Abramovich's Trading Companies. The evidence showed that he never did know, and took no steps to find out; he said that it was Mr. Patarkatsishvili who informed him. He suggested that there were regular meetings between Mr. Patarkatsishvili and Mr. Abramovich, but then admitted that he did not know what Mr. Patarkatsishvili did to ascertain the profits of Sibneft. He said that he was "[d]efinitely not" interested in knowing how large Sibneft's profits were.

319. The dispute between the parties in relation to payments made by Mr. Abramovich principally focused on:

i) whether any payments were made prior to 1996;

ii) whether the payments were referable to Sibneft's profits or to profits generated indirectly through Mr. Abramovich's Trading Companies as a result of his control or involvement with Sibneft; and

iii) whether the fact that payments were made to both Mr. Berezovsky and Mr. Patarkatsishvili supported Mr. Berezovsky's or Mr. Abramovich's case.

320. Mr. Berezovsky submitted that:

i) that there was no credible evidence that Mr. Abramovich made any *krysha* payments to Mr. Berezovsky in 1995; the evidence of Mr. Abramovich's team to the effect that payments were made under the alleged 1995 Agreement before 1996 was "clearly untrue" because it was evidence which was:

a) the product of collusion between witnesses;

b) reconstructed, following disclosure, from documents without any genuine recollection on the witnesses' part;

c) in parts, demonstrably false.

ii) that Mr. Berezovsky's case on the alleged 1995 Agreement (i.e. that it conferred upon him an interest in Sibneft shares or a right to such an interest) found support in:

a) the beneficiary of Mr. Abramovich's payments - being (according to Mr. Berezovsky) both Mr. Berezovsky and Mr. Patarkatsishvili; and

b) the quantum of Mr. Abramovich's payments – being (according to Mr. Berezovsky) correlated with the profits made by Mr. Abramovich and his Trading Companies as a result of his influence and control of Sibneft.

321. Mr. Abramovich, on the other hand, contended that he paid Mr. Berezovsky and Mr. Patarkatsishvili sums in the region of $ 20-30,000,000 in 1995, and that neither

those payments, nor payments made to him and to Mr. Patarkatsishvili between 1995 and 2000, bore any relation to Sibneft's profits or to those profits combined with the profits of Mr. Abramovich's Trading Companies. He submitted that the fact that payments were made to Mr. Patarkatsishvili, as well as to Mr. Berezovsky, was not consistent only with the partnership relationship alleged by Mr. Berezovsky; on the contrary, that fact was also consistent with Mr. Abramovich's *krysha* allegation.

General evidence about the payments made from 1995-2000

322. The evidence in relation to these two topics, to the extent to which it was (largely) uncontroversial, can be summarised as follows:

i) The amounts paid to Mr. Berezovsky and Mr. Patarkatsishvili actually came from Mr. Abramovich's Trading Companies, not from Sibneft itself.

ii) The amounts involved could not be precisely calculated, except for the year 2000, because of the absence of records. In the case of Mr. Abramovich, that was variously because the businesses whose records would be relevant had been liquidated or were no longer under his control, or hard copies of records no longer existed as a result of explicable routine destruction or loss. I reject the allegation made on behalf of Mr. Berezovsky[155] that the absence at trial of documents pre-dating 2000 in relation to the payments to Mr. Berezovsky was the result of a "deliberate policy of document destruction" on the part of Mr. Abramovich "in order to impede investigations into his dealings". There was a considerable body of evidence to show that this was not the case. I find there to have been nothing sinister in the absence of such records on Mr. Abramovich's part.

iii) In the case of Mr. Berezovsky, the absence of documentation (although some records relating to payment were produced by him) was largely explained by the fact that he had lost many documents in his flight from Russia, and because other records have been impounded by judicial authorities in the course of various money-laundering investigations.

323. Mr. Berezovsky accepted that substantial payments were made to him and/or Mr. Patarkatsishvili between 1996 and 2000; he did not put forward a positive case as to the ballpark figures but was reluctant to accept that the sums put forward in Mr. Abramovich's evidence were the sums which had been paid, although the figures for 1996-8 were presented by him as accurate to the French investigating judge in evidence given in June 2011 in the context of a judicial investigation into alleged money-laundering[156].

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155 See paragraph 173 of Mr. Berezovsky's written closing submissions.

156 The figures had originally been presented by M. Temime, Mr. Berezovsky's French lawyer, on behalf of Mr. Berezovsky to the French judicial authorities in a letter dated 16 June 2011. When examined by the magistrate on the figures, Mr. Berezovsky did not query their accuracy. Mr. Berezovsky told the French investigating magistrate that "As well we have a lot of documents which show the profit I got from Sibneft on the basis of 50-50 ownership". He has not produced any documents in this action to substantiate that assertion.

324. The evidence put forward by Mr. Abramovich and his witnesses showed the following profits or losses for Sibneft and the following payments made to Mr. Berezovsky and/or Mr. Patarkatsishvili for the relevant years:

All figures in $ millions		
	Sibneft	BB/AP
	Profits (Losses)	Receipts
1995	(206)	20-30[157]
1996	(2.3)	80-85
1997	68	70
1998	36	50
1999	315	50
2000	675	490

325. The figures given in the table for Sibneft profits were derived from the audited annual group financial statements. In cross examination Mr. Berezovsky asserted that the audited financial statements did not reflect the true profits of Sibneft, on the grounds that the trial of Mr. Khodorkovsky in 2003 showed that Russian oil companies generally transferred profits to connected entities by way of artificial transfer pricing, apparently in order to reduce their taxable profits[158]. I deal with this assertion below.

326. The figures given in the table for the years 1995-1999 were based upon estimates provided by Mr. Abramovich and Ms. Goncharova of sums which she handled on his behalf. For 1997, the table added to Ms. Goncharova's estimates a further 96.5 million French Francs and $4.35 million, approximating $20 million in total, which was paid by Runicom SA in that year for expenses associated with Mr. Berezovsky's property at Cap d'Antibes. These payments were not handled by Ms. Goncharova. The quantum of the French expenses paid in 1997 were confirmed by Hans-Peter Jenni ("Mr. Jenni"), a Swiss lawyer, who acted as legal and business adviser to Mr. Berezovsky from about 1991 and to Mr. Patarkatsishvili from about the same date to February 2008, and whose firm dealt with some of the administrative arrangements. For the year 2000, the figures were derived from an extant spreadsheet (the "Bolshoi Balance"), prepared under the supervision of Ms. Panchenko on the instructions of Mr. Shvidler[159]. This spreadsheet gave a detailed breakdown by categories of payee and by month. Ms. Panchenko explained that the total payments made to Messrs Berezovsky and Patarkatsishvili or their companies in 2000 were contained in a table described as "the FOM table".

327. Except for the payments allegedly made in 1995, these estimates were not seriously disputed by Mr. Berezovsky. His case as to what he was in fact paid was unclear. According to Mr. Rabinowitz, "Mr. Berezovsky does not in fact assert a case as to what precisely he was paid in these years". It appeared to be that he did "no[t] dispute at all that the sums were paid", but:

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157 This figure reflects the allegation made by Mr. Abramovich and was disputed by Mr. Berezovsky.

158 Berezovsky Day 6, pages 34-35.

159 Mr. Berezovsky abandoned his challenge to the authenticity of this document in the course of the trial. The metadata suggest that it was created on 4 July 2000, and last modified on 4 April 2002.

> "do[es] not accept … that those particular sums that Mr. Abramovich asserts were paid were in fact the sums that were paid"[160].

He did not put forward a positive case even as to a ballpark figure which he accepted he received.

Conclusion as to whether any payments were made to Mr. Berezovsky and/or Mr. Patarkatsishvili prior to 1996

328. The only real issue on the figures related to whether Mr. Berezovsky had received any payments in 1995. He denied receiving anything in that year pursuant to his version of the alleged 1995 Agreement. Such denial was consistent with his case that the payments represented Sibneft profits, or related to profits derived from the acquisition or control of Sibneft, since Sibneft was not formed until October 1995 and management control of the company was not acquired until the following year. But since he claimed to have no precise recollection of dates or figures, and said that he did not concern himself with the details of payments which he received, because this was left to Mr. Patarkatsishvili, his own evidence was not of much assistance on this issue. He was unable to give any satisfactory explanation in cross-examination for payments which certain documents showed had been made to him or LogoVAZ in 1995, including a sum of $4 million paid in September 1995. His suggestion that payments were made to LogoVAZ because Mr. Abramovich's companies had bought cars for its employees was unconvincing, and was, I find, rebutted by Mr. Abramovich in his oral evidence.

329. Mr. Abramovich and Ms. Goncharova gave evidence about the 1995 payments. Mr. Abramovich recalled an initial payment of $8 million in early 1995. He recalled a further payment of $10 million in the autumn, $4 million of which was paid directly to LogoVAZ. In cross-examination he also referred to a cash payment of $16,000 made to Mr. Berezovsky to enable him to pay off a debt to a Mr. Denisov and a payment made a couple of months later of a further $50,000.

330. Ms Goncharova recalled dealing with payments from early 1995 until late 2000[161]. She said that she was instructed by Mr. Abramovich to make a payment to Mr. Berezovsky of around $5 million in cash in early 1995. In her oral evidence, she gave a graphic and wholly credible account of personally delivering approximately $5 million of US dollars in banknotes in a holdall to Mr. Berezovsky at the LogoVAZ Club between February and March 1995 in instalments of $1 million and $500,000. She was able to pinpoint early 1995 as the relevant date, because it was around the time that Mr. Abramovich's staff had just moved into their new office premises. Mr. Abramovich's and Ms. Goncharova's recollection as to the timing was also consistent with the evidence that ORT was in desperate need of money in 1995.

331. Mr. Shvidler also gave evidence about a payment of $1 million paid by Runicom SA to Atrium Consolidated Limited on 6 December 1995. There was no dispute that such a payment was made, as Mr. Berezovsky disclosed a document showing that it had

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160 Day 18, pages 108-110.

161 Goncharova 1, paragraphs 9-20.

been. Mr. Shvidler's evidence was that Atrium was connected to Mr. Aven, to whom Mr. Berezovsky allegedly owed a debt.

332. Mr. Rabinowitz submitted that the evidence of Mr. Abramovich's team asserting that payments were made under the 1995 Agreement before 1996 was:

> "… clearly untrue. It was evidence which was (1) the product of collusion between witnesses; (2) reconstructed, following disclosure, from documents without any genuine recollection; and (3) in parts, demonstrably false."

333. In particular he submitted that Mr. Abramovich had changed his case about the basis on which payments were made, because reference was made in the Defence, and the evidence served in support of the summary judgment application, only to payments in respect of ORT and that the specific payments which were:

> "… now alleged by Mr. Abramovich to have been made to Mr. Berezovsky or Mr. Patarkatsishvili, or at their direction, prior to 1995, were not ORT payments".

334. Mr. Rabinowitz suggested that this posed a problem for Mr. Abramovich's case, because in evidence served in support of his strike-out application, by Paul Mitchard, a partner at Skadden, there was no reference to any payments unconnected with ORT. Mr. Rabinowitz submitted that, on the contrary, the statement made clear that only ORT-related payments were alleged; that was despite all of the major witnesses to payments – Mr. Shvidler, Ms. Panchenko, Ms. Goncharova, Ms. Khudyk – having been interviewed by Mr. Mitchard. Mr. Rabinowitz sought to point the contrast between the evidence of Mr. Abramovich's witnesses at the summary judgment stage and that given in their written witness statements, claiming that payments to Mr. Berezovsky were *krysha* payments to cover Mr. Berezovsky's "personal expenses", and not limited to ORT-related payments. He said that this was as the consequence of collusion between Mr. Abramovich's witnesses. The various witnesses were cross-examined by him and Mr. Gillis to this effect.

335. I reject Mr. Rabinowitz's attack on the veracity of the evidence of Mr. Abramovich's witnesses in this respect. Mr. Abramovich's case had always been that the agreement with Mr. Berezovsky arose in the context of Mr. Berezovsky needing to meet the cash flow requirements of ORT, so that Mr. Berezovsky could use his control over the TV station to maintain his political power and influence. As both Mr. Abramovich and Mr. Shvidler said in their written and oral evidence, the great majority of the funds constituting $30 million paid in the first year did in fact go to ORT, but the scope of Mr. Berezovsky's demands expanded over time, so that there was a gradual increase in the proportion of Mr. Berezovsky's personal expenditure that was being funded by Mr. Abramovich. It was Mr. Berezovsky's own evidence that, by 1997, his entire personal expenditure was in fact being funded by Mr. Abramovich. Mr. Abramovich was not involved in ORT and had no particular reason to be concerned about whether or not the money was strictly being applied for ORT purposes. Mr. Berezovsky has never alleged that it was a term of the alleged 1995 Agreement that the money paid to him had to be applied for ORT purposes. Mr. Abramovich's concern was with the amounts, not with what the purpose to which Mr. Berezovsky applied the funds.

336. In his written evidence[162], Mr. Shvidler described the changing position as follows:

> "129. However, before long, Mr. Berezovsky began to widen the scope even further and there was a sense of 'ORT Project' or rather 'Project Boris' i.e. we were expected to meet all the expenses that went along with elevating and maintaining Mr. Berezovsky's position as a powerful and wealthy man. This was supposed to be our 'insurance policy' to make sure that we retained our control of Sibneft. We paid for his house in the South of France as part of Project Boris. Mr. Abramovich told me at the time that Mr. Berezovsky had asked for money for a house in the South of France, which Mr. Berezovsky had said he needed for entertaining consistent with being the controller of a major TV company. Mr. Berezovsky would regularly send us invoices related to other businesses or for personal items, on the basis that it was necessary to enhance his standing."

And, in cross-examination, Mr. Shvidler said:

> "I think whatever Mr. Berezovsky says was ORT was ORT".

I have no doubt that this was the case.

337. Mr. Rabinowitz's arguments, in my judgment, placed undue semantic emphasis on what was said by Mr. Mitchard (who was not involved in the actual events) at the pre-disclosure, summary judgment stage. Mr. Abramovich and his witnesses gave credible oral explanations as to how their evidence came to be summarised by Mr. Mitchard at that early stage. As I have said earlier in this judgment, this was a case where the evidence given by witnesses in oral cross-examination and re-examination was on the whole more reliable – in the sense of more nearly approximating the truth – than what was said in closely crafted witness statements on earlier interlocutory occasions.

338. I also reject the suggestion, put to Mr. Abramovich and Ms. Goncharova in cross-examination, that the 1995 payments were a recent invention or emerged as a result of collusion. These payments were not required to be specifically pleaded, and were mentioned on the first occasion on which evidence on the merits was served on Mr. Abramovich's behalf. Mr. Mitchard's third witness statement (served for the summary judgment application) states on the basis of information provided by Mr. Abramovich that the payments began "… in the first half of 1995 before Sibneft had even been established", and that Ms. Goncharova had confirmed that "… she was responsible for payments to ORT from about the beginning of 1995". Nor do I accept Mr. Rabinowitz's criticisms of the evidence of Mr. Abramovich, Ms. Goncharova and Mr. Shvidler in this context[163]. Mr. Abramovich was very careful in his evidence to differentiate between what he could actually remember or "recollect", and that which

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[162] Shvidler 3rd witness statement paragraph 129.

[163] See paragraph 426-430 of Mr. Berezovsky's written closing submissions.

he had reconstructed from documents shown to him. Likewise I accept Ms. Goncharova and Mr. Shvidler's evidence in relation to the 1995 payments. Ms. Goncharova's oral account of struggling with a heavy holdall, laden with dollars, to the LogoVAZ club, was particularly convincing, as was her dating of this trip by reference to the move to the new offices. Nor do I find anything surprising about the fact that Mr. Abramovich consulted Ms. Goncharova, amongst other sources, about these payments, as he frankly admitted in cross-examination. Since she was the person in charge of handling the payments, it was the obvious thing for him to do.

339. As an example of this type of criticism, Mr. Rabinowitz, in his written closing submissions[164], referred to Mr. Abramovich's cross-examination about his evidence recalling a demand in Autumn 1995 by Mr. Berezovsky for $10 million, of which $4 million was paid by Runicom SA to LogoVAZ. Mr. Rabinowitz criticised Mr. Abramovich for claiming "a mixture of recollection and reconstruction" and for the fact that Mr. Abramovich was allegedly "unable to give an explanation" for the narrative on a Debit Advice from Runicom SA's bank, United Overseas Bank, Geneva, to Runicom SA showing a payment of $4 million to LogoVAZ. The narrative read: "Payment under Settlement Agreement". That criticism was not justified. The cross-examination was as follows:

> "Q. This document does indeed show a payment from Runicom SA to LogoVAZ in September 1995 but it refers, Mr. Abramovich, to payment under a settlement agreement. Are you suggesting that Runicom SA was issuing false invoices that misrepresented what the payments were being made for?
>
> And my question to you, if you're suggesting that this was not a payment being made under a settlement agreement, is whether your suggestion is that Runicom SA were issuing false invoices that misrepresented what the payments were being made for?
>
> A. Now, if I understand you correctly, this settlement agreement - or that name, it's a very broad term, and I'm sure that that document was executed at that time because otherwise the bank, the paying bank, would not have accepted this payment and would not have made the payment. So there is nothing false about it.
>
> Q. So is your evidence now that this payment was made as a result of some agreement called the settlement agreement between Runicom SA and LogoVAZ?
>
> A. I can only speculate. It's been a long time and it's very hard for me to recall. But if it says what it is, then this is what it is. But I can comment why that money was needed.

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[164] See paragraph 426-429 of Mr. Berezovsky's written closing submissions.

> Q. What I'm interested in is why it was paid, Mr. Abramovich, because if you say there was a settlement agreement and it was paid as a result of a settlement agreement, then I suggest to you that is not consistent with this being paid as *krysha*.
>
> A. If I recall correctly, Mr. Berezovsky demanded that that payment be made and he needed this in order to pass it on to Mr. K[h]orzakhov[165] later on. Part of it was paid in hard cash and part of it was in non-hard cash, i.e. bank transfer."

340. Thus Mr. Abramovich not only gave an explanation of the narrative on the debit note, but also gave one which was wholly consistent with the payment being of a *krysha* nature. Indeed, vague, broad-brush wording, such as "Settlement Agreement", is just the type of wording one might expect a payer to use to describe a payment destined to secure political influence, in circumstances where, on the one hand, as Mr. Abramovich described, the payer needed to convince the bank that the payment was legitimate so that it would effect payment, and, on the other, might wish to conceal from the bank the true nature of the payment. Whilst such description is one that might justifiably be open to criticism in a Western accounting context, as providing a false explanation, its use was understandable in the circumstances. Mr. Berezovsky speculated in his evidence that this payment might have been for motor cars purchased by Runicom SA from LogoVAZ, but that suggestion was rebutted by Mr. Abramovich's evidence, which on this point I accept.

341. In his written closing submissions[166], Mr. Rabinowitz also suggested that Ms. Goncharova's evidence "had been exposed as untrue"; because, it was said, she had referred to an assistant of Mr. Berezovsky's called Ivan; and because, Mr. Berezovsky, following this evidence:

> "… had been able to locate the employment records for 'Ivan' - Ivan Surov - who worked at the LogoVAZ club."

The assertion was made that:

> "Mr. Surov was first employed on 4 December 1996, very much later than the time when Ms. Goncharova claims to have interacted with him there"

and accordingly "her recollection was false". However the documents produced by Mr. Berezovsky did not in fact demonstrate that Mr. Surov was employed by Mr. Berezovsky (or entities associated with him) only as from December 1996. On the contrary, what the documents produced by him and other documents suggested was:

i) that Mr. Surov was first employed by an entity called Novokuznetskaya Street House CJSC as from December 1996;

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165 Alexander Korzhakov, Head of the President Yeltsin's Security Service, 1993-1996.

166 See, for example, paragraph 108(4)(2)

ii) that Mr. Surov had previously been employed by a company called JSC Engineering[167], which appears to have been associated with Mr. Berezovsky and to have been a subsidiary of LogoVAZ;

iii) that Mr. Surov had been employed in the same job as an administrator from September 1988[168].

342. This evidence was not put to Ms. Goncharova and no application was made by Mr. Rabinowitz to have her recalled or to adduce further evidence relating to the date when Mr. Surov first started working as Mr. Berezovsky's assistant. Nor do I accept the other criticisms made by Mr. Rabinowitz as to, for example, the late emergence of this evidence, the alleged inconsistencies in her evidence, and the absence of any cross-examination of Mr. Berezovsky's witnesses in relation to Mr. Surov[169]. This was precisely the sort of detail which one might expect to emerge in cross-examination. I accept Ms. Goncharova's evidence in this respect.

343. Accordingly, I conclude on the evidence that sums in the region of $20-30 million were indeed paid by Mr. Abramovich to Mr. Berezovsky, or to his order, in the year 1995. Whilst these payments could have been characterised as being consistent with Mr. Berezovsky's case, on the grounds, for example, that they were effectively payments on account of an entitlement to 50% of future or anticipated profits to be earned by Mr. Abramovich's Trading Companies as a result of the acquisition of control of Sibneft, that was not the way in which Mr. Berezovsky chose to address the issue. As I have said, he simply denied that payments had been made in 1995. In those circumstances, I conclude that the evidence in relation to the 1995 payments does indeed undermine Mr. Berezovsky's case in relation to the alleged 1995 Agreement.

Conclusion on whether the payments made to Mr. Berezovsky and/or Mr. Patarkatsishvili between 1995 and 2000 were referable to 50% of Sibneft's profits or the profits of Mr. Abramovich's Trading Companies

344. Mr. Rabinowitz submitted[170] that the evidence suggested that the payments to Mr. Berezovsky and Mr. Patarkatsishvili were, consistently with the alleged 1995 Agreement, actually calculated as 50% of the profits generated from Mr. Abramovich's influence and control of Sibneft, as a result of his alleged partnership with Mr. Berezovsky and Mr. Patarkatsishvili. He also submitted[171] that the quantum of such payments correlated with the profits made by Mr. Abramovich "as a result of his control of Sibneft". In support of these contentions, Mr. Rabinowitz submitted as follows:

i) Mr. Abramovich's own case was that in 1995 he expected to make about $60 million from his influence gained over the companies to be placed into Sibneft, by increasing his profits from $40 million to $100 million, and expected to pay about $30 million to Mr. Berezovsky; although it was controversial whether any such payments were actually made, the expectation that he would pay 50%

167 This was apparent from the "application" by Mr. Surov to transfer jobs.
168 See the entry on Box 11 of the "personal card".
169 See for example commentary on paragraph 108(4)(2) in Mr. Berezovsky's Second Schedule.
170 See paragraph 445 of Mr. Berezovsky's written closing submissions.
171 See paragraph 446 of Mr. Berezovsky's written closing submissions.

of his generated profits to Mr. Berezovsky was plainly consistent with the 1995 Agreement.

ii) The evidence of the Le Bourget transcript and the Bolshoi Balance demonstrated that in 2000 Mr. Abramovich paid Mr. Patarkatsishvili and Mr. Berezovsky approximately 50% of the sum which he had told them had been generated from his oil trading using Sibneft.

iii) It was clear, therefore, that, whatever was Mr. Berezovsky's pleaded case, the focus of his argument at trial was based on an alleged correlation between what he and Mr. Patarkatsishvili were paid on the one hand, and not only the profits of Sibneft (when they finally came to be earned as from 1997), but also the profits of Mr. Abramovich's Trading Companies derived from their trading with, or the latter's "involvement with, Sibneft"[172], on the other hand. In essence this involved an allegation that such profits of Mr. Abramovich's Trading Companies should be treated as Sibneft profits and/or that the 50:50 profit share expressly agreed under the terms of the alleged 1995 Agreement extended to a share of the profits of Mr. Abramovich's Trading Companies that were derived from his "involvement with Sibneft".

My conclusions on calculation and correlation

345. Contrary to Mr. Rabinowitz's submission, I conclude that the evidence did not demonstrate that the payments made to Mr. Berezovsky and Mr. Patarkatsishvili were "actually calculated as 50% of the profits generated from Mr. Abramovich's influence and control of Sibneft". Nor did such evidence establish that there was in fact any correlation as between such payments and the profits made by Mr. Abramovich as a result of his control of Sibneft. Accordingly I do not accept that Mr. Berezovsky's case in relation to the alleged 1995 Agreement finds support from the evidence relating to the payments. My reasons for this conclusion are set out below.

No correlation to Sibneft's profits

346. First, none of the payments which were made in the period 1995-1999 were referable to Sibneft profits, as shown in its annual audited group financial statements. Indeed this was accepted on behalf of Mr. Berezovsky. Mr. Rabinowitz referred to this point as "a red herring". However it was one that was in issue between the parties, at least at some stage during the trial, and was a point prayed in aid by Mr. Abramovich. The fact that the payments were not referable to Sibneft's profits was shown by the following:

i) As I have found, the payments to Mr. Berezovsky, or his order, began in February 1995. In that year, $20-30 million was paid before any management interest or shareholding interest in Sibneft had been acquired.

ii) In 1996, Sibneft made a loss, but an estimated $50 million was nevertheless paid to Mr. Berezovsky and Mr. Patarkatsishvili in that year. Mr. Abramovich's stake in Sibneft did not exceed 47% in 1996.

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[172] See, for example, the heading to paragraph 439 of Mr. Berezovsky's closing.

iii) For 1997 and 1998, the payments to Mr. Berezovsky and Mr. Patarkatsishvili exceeded the entire profits of Sibneft for the year.

iv) 1999 and 2000 were the first years in which Sibneft's total profits exceeded the payments to Mr. Berezovsky and Mr. Patarkatsishvili. In 2000, the payments were considerably more than 50% of Sibneft's profits, even on the footing (asserted by Mr. Berezovsky but disputed by Mr. Abramovich) that $30 million of the payments represented the latter's profit share in respect of RusAl.

v) The absence of correlation between Sibneft's profits and payments to Mr. Berezovsky and Mr. Patarkatsishvili would have been even greater if Mr. Berezovsky were right in saying that his share of the cost of acquiring Sibneft shares in the auctions of 1996 and 1997 fell to be set off against his share of profits.

vi) No profits of Sibneft were distributed until the dividend of $50 million declared in November 2000, but nonetheless payments were being made throughout the year to Mr. Berezovsky and Mr. Patarkatsishvili.

No proof of improper transfer or diversion

347. Second, I reject Mr. Berezovsky's allegation that the audited financial statements did not reflect the true profits of Sibneft on the grounds that it had improperly transferred profits to connected entities by way of artificial transfer pricing, whether in order to reduce its taxable profits or to transfer profit to certain shareholders, and that Sibneft's profits should therefore be treated as including the profits of Mr. Abramovich's Trading Companies. Mr. Berezovsky's referred to this process as "tricked" [173].

348. Mr. Rabinowitz sought to stress both during the course of the trial, and in his written closing submissions, that Mr. Berezovsky was <u>not</u> making any allegations about transfer pricing and sought to disavow any such allegation. But Mr. Berezovsky's own evidence in response to questions put by Mr. Sumption in cross-examination clearly suggested that he was indeed alleging that the profits on sales of the oil were improperly not being taken in Sibneft, which he accepted was not profitable, but rather being captured abroad or in one of Mr. Abramovich's Trading Companies. The following passages give a characteristic sample of Mr. Berezovsky's evidence on this point:

> "Q. Sibneft didn't make a single penny of profits in 1996, did it?
>
> A. Mr. Sumption, I explain you again and I agree again -- explain to you again: they use all company, all oil company, the same way. Company itself was not profitable but they make money trading oil abroad and selling for the other price. Nothing changed that time.

[173] Berezovsky Day 6, pages 34-35.

Q. You have no knowledge, do you, of what the trading terms were between Sibneft and those to whom it sold export oil? You have no personal knowledge of that at all, do you?

A. About how they deal -- how the -- what is technology of this deal?

Q. No. As I understand it, the last answer that you gave was talking about transfer pricing. Right?

A. It's different terminology. Some use transfer pricing, some use different pricing, but I learned that only after. I didn't know these words before.

Q. You still have not got the faintest idea, have you, of what the terms of trading were between Sibneft and those to whom it sold oil?

A. Mr. Sumption, I am sorry for this example. When I present my PhD, I try to explain it to my mum -- she doesn't have this education like me -- because the sense of the problem I understand well, anyone in the world. I heard by TV that you have the greatest mind in England, I accept that; but believe me this is not your level, a little bit less, to understand what means to get profit from abroad when you sell in the country.

Q. Do you actually know anything about the terms of trade between Sibneft and those to whom it sold oil?

A. I don't know anything about the terms I know how it was done.

Q. How do you know how it was done?

A. Because it was common knowledge. Every oil company, they have done the same, and Khodorkovsky is in jail because of that.

Q. You don't know at all?

A. It's common knowledge for everybody who knew a little bit. It's known, it's common knowledge.

Q. You say that other companies engaged in transfer pricing and therefore you assume that Sibneft did, but you don't know at all, do you?

A. Mr. Sumption, I knew that at all. Excellent. I knew -- I don't knew any details but I knew the construction. It's very simple and you know that[174].

…

Q. Now, you have just suggested, in the answer that you last gave, that the profits generated by Sibneft ended up with Runicom. That's what I understood you to suggest.

A. 'Ended up'? (Consults interpreter) Sibneft itself that time did not generate the profit. Sibneft that time generate oil and refinery of oil and sell it to Runicom and then Runicom generate the profit because Sibneft -- it was exactly what happened in Soviet Union when Sibneft was vertical-integrated company: one company produce oil, the second company refinery oil, the third company sell oil. The company which produce oil didn't get anything because they just produce oil; that's it. It's expensive, it's not a profit. The company that refine it, they also don't produce the profit: they produce the product which is profitable. And then only on the last stage it was -- the company who sell all that, this company generate the profit. It's happened at the beginning that all oil company tricked. What does mean 'tricked'? They sell oil and product which produced refinery company with low price, then sell this -- produced price, then sell it to another Russian company and companies sold abroad and after that it generated profit. It's what Abramovich has done and all other oil company have done[175]."

349. It was for Mr. Berezovsky to adduce evidence to support this allegation of improper transfer pricing. He did not do so. His own conclusions based on disclosures in court proceedings about the affairs of Yukos, another oil company, and Mr. Khodorkovsky, were of no evidential weight.

350. He produced no evidence to show that Sibneft's financial statements, audited by Arthur Andersen, in accordance with US GAAP, subject to any overriding requirements of Russian law, understated Sibneft's profits by excluding profits earned as a result of transfer pricing transactions, whether with connected parties or third parties. Indeed Mr. Berezovsky did not appear to challenge them[176]. As Mr. Berezovsky acknowledged, Sibneft was one of the first major Russian companies to have its accounts audited in accordance with general accounting standards applicable in the West. Sibneft's financial statements referred to "Related party transactions", (i.e. transactions between the company and its directors, managers or

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174 See Berezovsky Day 5, page 118 *et seq*.
175 See Berezovsky Day 6, page 31.
176 Berezovsky Day 6, page 35

shareholders, or companies in which its directors, managers or shareholders have material interests). The relevant connected parties in the case of Sibneft were Runicom SA or Runicom Ltd[177], which were controlled by Mr. Abramovich. Sibneft sold export crude and products to Runicom SA/Runicom Ltd until 2000 when the oil trading operations were consolidated with the Sibneft group. The accounts in the relevant period dealt specifically with transactions between Sibneft and these companies, stating, for example, the percentage of total sales made to such companies and amounts receivable from such companies. In 1996 there was a specific statement to the effect that the sales were at market prices, although this statement did not appear in subsequent years. The auditors would have been obliged to have noted any inappropriate transfer pricing transactions that artificially or improperly reduced Sibneft's profits, to the detriment of its shareholders who were not related parties. No such irregularities were reported.

351. The course of trading between Sibneft and Runicom SA/Runicom Ltd, which were appointed as Sibneft's exclusive export agents from 1995, was also described in a Sibneft Eurobond offering circular of 1997[178]. The accuracy of the information in the circular was verified by Salomon Brothers and Cleary Gottlieb. Mr. Patarkatsishvili, who was a director of Sibneft at the time, was among those who took responsibility for it. In summary, export crude oil was sold to Runicom SA or Runicom Ltd at world market prices less a commission of about 2% until March 1997 when the commission discounts ceased. Products were sold at world market prices throughout. Both companies, moreover, had other trading operations unconnected to Sibneft. Mr. Abramovich's evidence was that, in addition to Sibneft, his Trading Companies obtained significant business from elsewhere, for example as exporters of Rosneft products. Mr. Abramovich's evidence was that his Trading Companies did not engage in transfer pricing, and were not in a position to do so because the oil price was highly regulated[179]. Mr. Shvidler also dealt with the question of alleged "transfer pricing" in his third witness statement. The use of ZATOs and other internal tax zones and vehicles was described by Mr. Gorodilov[180]. He explained the use that Sibneft made of such entities and the distribution of the amounts earned by the tax efficient companies as between the Trading Companies controlled by Mr. Abramovich and Sibneft, in such a way as to ensure that Sibneft itself was in the same financial position as it would have been if the tax efficient companies had not been used.

352. Their evidence on these matters was not challenged in cross-examination. The only evidence that was referred to on Mr. Berezovsky's behalf[181] which might possibly have supported an allegation of improper transfer pricing was the 2002 Audit Chamber's Report (although this was referred to by Mr. Rabinowitz in the different context of the quantum of receipts of Mr. Abramovich's Trading Companies), but Mr. Rabinowitz did not seek to rely on such report and, as I have said, expressly

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177 Mr. Shvidler explained that Runicom Ltd was incorporated in July 1996 and subsequently took over business from Runicom SA. Shvidler 3rd witness statement, paragraph 13.

178 Mr. Berezovsky accepted that he was not in a position to disagree with this analysis: Berezovsky Day 6, pages 64-65.

179 Abramovich 7th witness statement, paragraph 9; Abramovich Day 18, page 38.

180 Gorodilov 1, paragraphs 36-46.

181 The later investment analyst research notes, dating from 2001, referred to at paragraph 442 of Mr. Berezovsky's written closing submissions were not relied upon for this purpose and were not evidence, or at least not satisfactory evidence, of improper diversion.

disavowed any allegation of improper transfer pricing. Certainly, if such an allegation had been pursued, I would have expected evidence, expert or otherwise, to show that the Sibneft audited financial statements had either mis-stated the position, or could not be relied on to reveal the fact that the "real" profits from Sibneft's oil were being captured by trading counterparties. Accordingly, I do not accept the suggestion, to the extent that it was made by Mr. Berezovsky, that Sibneft's funds or profits were improperly diverted or siphoned off to Mr. Abramovich's Trading Companies or tax vehicles, and therefore that, for that reason, the profits of the Trading Companies should be treated as "Sibneft's profits".

No actual correlation to 50% of the profits of Mr. Abramovich's Trading Companies

353. Notwithstanding my conclusions in relation to the transfer pricing allegation, and notwithstanding the inadequacies of Mr. Berezovsky's pleaded case, I approached the matter (in Mr. Berezovsky's favour) on the basis that, if there had been a profit share agreement with Mr. Abramovich, it would have been wholly logical, from a commercial perspective, for Mr. Berezovsky to have insisted on having a profit entitlement to share not only in Sibneft profits, but also in a wider pool of profits generated by Mr. Abramovich's Trading Companies. That was because:

i) first, as Mr. Abramovich himself said, one of his stated aims in acquiring control of Sibneft was to increase the profits which his own Trading Companies might generate through trading with the businesses of Noyabrskneftegaz and Omsk Oil; and

ii) secondly, even absent any improper diversion of funds from Sibneft, or legitimate transfer pricing, the evidence showed that there was a substantial amount of re-organisation of the business of the previously State-run subsidiaries that would be required before Sibneft itself would be generating profits.

So I have approached my determination of the issue on the basis that, if there had been a profit-sharing agreement between the three men, it was likely that any such agreement would extend to the wider profit pool.

354. I turn, therefore, to consider whether evidence relating to the quantum of the payments made to Mr. Berezovsky and Mr. Patarkatsishvili supports Mr. Berezovsky's final version of the alleged 1995 Agreement[182]. Mr. Berezovsky's argument depended upon him showing an actual correlation between what he and Mr. Patarkatsishvili were paid in each of the years 1995 – 2000 on the one hand, and, on the other hand, 50% of the profits generated by Mr. Abramovich's Trading Companies that were attributable to trading with Sibneft, or Mr. Abramovich's control of, or involvement with, Sibneft. As was pointed out in Mr. Berezovsky's written closing submissions[183], and accepted by Mr. Abramovich, there was a considerable amount of evidence to show that Mr. Abramovich's Trading Companies generated very substantial profits as a result of their trading with, and/or

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182 That is, that it was an express oral term of the alleged 1995 Agreement that he (and Mr. Patarkatsishvili) would be entitled to all profits "in respect of our share of Sibneft", whether generated directly by Sibneft or indirectly through, or as the result of any trading connection between Mr. Abramovich's trading companies and Sibneft.

183 See, for example, paragraphs 439-443

Mr. Abramovich's control of, or involvement with, Sibneft. The evidence also showed, as I have already said, that the payments to Mr. Berezovsky and/or Mr. Patarkatsishvili came from Mr. Abramovich's Trading Companies.

355. But my third reason for rejecting Mr. Berezovsky's argument under this head is that Mr. Berezovsky was unable to demonstrate, on the evidence, that numerically what he and/or Mr. Patarkatsishvili were paid bore any, or any real, correlation to 50% of the profits of Mr. Abramovich's Trading Companies derived from their trading with Sibneft or as a result of Mr. Abramovich's control of, or involvement with, Sibneft.

356. The allegation that there was such a correlation appeared to be based on three arguments put forward by Mr. Rabinowitz:

i) First, that because Mr. Sumption had said in opening, as confirmed by Mr. Abramovich in evidence, that:

> "… as Sibneft prospered and Mr. Abramovich was in a position to pay more, Mr. Berezovsky demanded more"

that meant that Mr. Abramovich accepted that there was a correlation between Sibneft profits (in the expanded sense used by Mr. Berezovsky) and payments to Mr. Berezovsky; and

ii) second, that because Mr. Abramovich's own case was that, in 1995, he expected to make about $60 million from his influence gained over the companies to be placed into Sibneft, by increasing his profits from $40 million to $100 million, and expected to pay about $30 million to Mr. Berezovsky (i.e. 50% of $60 million), that demonstrated the relevant correlation; and although it was controversial whether any such payments were actually made in 1995, the expectation that Mr. Abramovich would pay 50% of his generated profits to Mr. Berezovsky was plainly consistent with the 1995 Agreement. Indeed Mr. Berezovsky's written closing submissions asserted[184]:

> "Mr. Abramovich's evidence is also that it was agreed that Mr. Berezovsky's reward for performing his side of the bargain would be 50% of this profit, i.e. in the first year $30 million." [Emphasis supplied]

iii) Third, that the figures shown in the Bolshoi Balance for the payments made to Mr. Berezovsky and Mr. Patarkatsishvili in 2000 showed the relevant correlation.

357. I am not persuaded by either of the first two arguments. As to the first, the fact that Mr. Berezovsky demanded more, as Mr. Abramovich and Mr. Abramovich's Trading Companies became richer, and became in a position to pay more, was not indicative of an agreed entitlement to participate in 50% of such profits; nor was it any more consistent with Mr. Berezovsky's case than with Mr. Abramovich's case. As to the second argument, apart from the fact that Mr. Berezovsky did not accept that any payments were made to him at all in 1995, Mr. Abramovich's evidence was not "that

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184 See paragraph 358(1).

it was agreed that Mr. Berezovsky's reward for performing his side of the bargain would be 50% of this profit". Mr. Abramovich explained that it was Mr. Berezovsky who indicated that he would require approximately $30 million per year for ORT and his personal expenses, and that he subsequently inquired how much Mr. Abramovich could make a year in order to satisfy himself that Mr. Abramovich could afford to pay his fee. It was in that latter context that Mr. Abramovich indicated that he currently generated around $40 million per year and expected to be able to increase it to around $100 million per year. As Mr. Abramovich explained in his witness statement

> "I am absolutely clear that he did not fix his fee by reference to 50% of my anticipated trading income or otherwise make any reference to sharing profits."

358. Likewise in his oral evidence Mr. Abramovich made it clear that Mr. Berezovsky was not interested in how Mr. Abramovich's Trading Companies would perform; he was only interested in whether Mr. Abramovich could pay $30 million:

> "He was interested in the cashflows that I was able to provide.[185]"

359. I accept this evidence. It was entirely consistent with Mr. Berezovsky's lack of interest in detailed financial matters.

360. As to Mr. Rabinowitz's third argument, I deal with the evidence relating to the figures shown in the Bolshoi Balance for the year 2000 below.

Lack of certainty as to which profits Mr. Berezovsky was entitled

361. My fourth reason for rejecting Mr. Berezovsky's allegation of correlation (which, indeed, applies more widely in relation to his case as to the alleged profit sharing terms of the alleged 1995 Agreement), is that his evidence was vague and uncertain as to which profits he claimed that he and Mr. Patarkatsishvili had a 50% entitlement. Even leaving to one side the absence of any pleading of this alleged express term, his case as to the relevant profit source was wholly unclear. Was it to be a share only in the increased profits of Mr. Abramovich's Trading Companies, generated as a result of Mr. Abramovich acquiring influence and control of Sibneft (as paragraph 445 of Mr. Berezovsky's closing, and its reference to $30 million as 50% of $60 million, would appear to suggest)? If that were so, there would, it is to be supposed, have had to have been a fairly complex annual calculation of what the Trading Companies were making prior to such acquisition (as they were already making profits and trading with Noyabrskneftegaz and Omsk Oil), followed by a calculation which stripped out those profits, as well as those generated by trading with non-Sibneft entities, from the quantification of Mr. Berezovsky's and Mr. Patarkatsishvili's 50% profit share. On that basis, there would also have had to have been a calculation of the profits earned by Sibneft itself. Or was the claimed share to include all profits of Mr. Abramovich's Trading Companies, even those generated as a result of trading with non-Sibneft entities? And would a proportionate share of the losses incurred by Sibneft in 1995 and 1996 have fallen to be deducted from Mr. Berezovsky's and Mr. Patarkatsishvili's

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[185] Abramovich Day 17, page 51.

50% share? Mr. Berezovsky's evidence did not attempt to provide the answers to any of these questions.

No attempt to conduct any correlation exercise

362. Fifth, the evidence showed that no attempt was ever made at the time to relate the payments made to Mr. Berezovsky and Mr. Patarkatsishvili either to the profits of Sibneft, or to the profits made by Mr. Abramovich or his Trading Companies by virtue of their trading with, or his control of, Sibneft. Mr. Abramovich's evidence, which I accept, was that Mr. Berezovsky was never interested in the activities of his Trading Companies or Sibneft, and that no one ever sought to audit, or verify the profits, for the purposes of distributing some defined share to Mr. Berezovsky or Mr. Patarkatsishvili. No information was ever provided to Mr. Berezovsky or Mr. Patarkatsishvili about Sibneft's profits, although they did have access to the information publicly available in the company's published financial statements. Nor was any information given to them about the profits of any of Mr. Abramovich's Trading Companies. The following passages from Mr. Abramovich's third witness statement explained the position:

> "69. Mr. Berezovsky was never interested in the activities of my Trading Companies or Sibneft. He was concerned only about my ability to pay and he just assumed that I would pay whatever he asked and that, if I had a cashflow problem, I would let Mr. Patarkatsishvili know there would be a slight delay in making payment.
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> …
>
> 131. For the larger payments, it was generally Mr. Shvidler who, after discussing them with me, supervised the logistics, often communicating with Mr. Patarkatsishvili to make sure Mr. Berezovsky received them. Mr. Shvidler sought to protract and delay payments where possible, as well as source them from alternating Trading Companies in such a manner that they would not disrupt their cash flows and activities.
>
> 132. Mr. Berezovsky's demands were not tied to any notion of a 'share of profits' - be it of Sibneft or any other company. Mr. Berezovsky never asked me to provide to him any official profit and loss position for either Sibneft or any other company under my control.
>
> 133. He only seemed to be interested in whether I had sufficient cash available to afford his demands for payment. I would sometime refer to limitations in cashflow in different companies as a reason to defer payment or negotiate a proposed amount. By the end of 2000, he and Mr. Patarkatsishvili seemed to have

made their own back of the envelope calculations of what I was earning from my different businesses as a basis upon which to suggest that I had enough cash to pay their demands but again this was all about access to cash and not about profit.

134. For example, when in 1998 the oil prices hit the all-time-low of about $8 per barrel, and I was losing money in the oil business, Mr. Berezovsky still expected me to pay his demands, and I had to do so.

135. I never got involved in the details of payments and I do not remember the specifics of the 1997-1999 credit agreements alleged by Mr. Berezovsky but from the amounts and the currency, these could relate to the French property he asked me to purchase for him. I have some recollection that the idea for providing Mr. Berezovsky loans instead of cash payments might have originated from his desire to avoid French transaction taxes."

Mr. Shvidler's evidence supported that of Mr. Abramovich. I accept their evidence on this point.

363. Mr. Berezovsky said in his oral evidence that he did not know how much money was paid to him and Mr. Patarkatsishvili, and that the latter was responsible for checking Sibneft's profits[186]:

"Q. Now, you say that these payments represented your share of Sibneft's profits. How do you know that?

A. I don't know that at all. Mr. Abramovich told me that he has obligations to hold my shares and to pay me according of profit which these shares generate finally.

Q. What steps --

A. I didn't have any idea how much company generate and so. Again, mainly -- not mainly -- Badri was responsible to cooperate with Abramovich for checking how is everything going and time to time Badri put me that, 'Boris, everything is going well'".

But Mr. Berezovsky could not identify any steps taken by Mr. Patarkatsishvili to ascertain the figures[187]. The following gives an example of his evidence in this respect:

"MRS JUSTICE GLOSTER: My question for you is this: was there any formal or informal process whereby Badri or

[186] Berezovsky Day 6, page 38.
[187] Berezovsky Day 6, page 39; Day 6, page 40; Day 6, page 41.

you, or staff on your behalf, would audit the profits that were being generated by Sibneft?

A. I don't know anything about formal process. I just know about regular meetings Badri with Roman and maybe with Shvidler as well, as I understand, when they present him report what happened in the company.

And that is as money is concerned.

MR. SUMPTION: What steps did you understand that Mr. Patarkatsishvili had taken to ascertain what were the profits of Sibneft?

A. I don't have any idea. I don't have any idea. I think as we agreed in our agreement as we agreed in '95, we trust Abramovich and we didn't have time to manage the company and to send audit and so. It's not -- already not trust at that time in our understanding."

364. If indeed there had been an express agreement that Mr. Berezovsky and Mr. Patarkatsishvili were to be jointly entitled to a 50% share of the net profits after tax of Sibneft and/or Mr. Abramovich's Trading Companies, one might have expected that at least some sort of informal audit process would have taken place. I find the absence of evidence of any such process (other than Mr. Berezovsky's vague assertions about Mr. Patarkatsishvili) surprising, if, indeed, Mr. Berezovsky's case were correct.

No correlation in timing, amounts or methods of payment

365. Sixth, the process by which the timing, the amounts and the method of the payments were agreed did not support Mr. Berezovsky's theory that such payments related to, or correlated with, any specified proportion of profits made by Mr. Abramovich, whether directly from Sibneft and/or indirectly through Mr. Abramovich's Trading Companies, as a result of his involvement with, or control of, Sibneft. The following summary of the evidence in this respect gives a clear flavour of what I find as a fact, was

> "… a demand-led system created to satisfy Mr. Berezovsky's financial whims … [which] had nothing to do with Sibneft profits[188]."

366. At about the beginning of each year Mr. Abramovich would discuss with Mr. Patarkatsishvili how much Mr. Berezovsky could expect to receive in that year for his "expenses". Mr. Abramovich described the process as follows[189]:

> "The stronger Mr. Berezovsky became, the more money he required to maintain his position. Typically, around the

[188] Mr. Abramovich's written closing submissions paragraph 57(5).
[189] Abramovich 3rd witness statement, paragraph 69.

beginning of each year, we would discuss with Mr. Patarkatsishvili the amount that Mr. Berezovsky expected to receive from me that year given his political expenses, such as the financing of ORT, maintenance of his political image, financing of various mass media, and also his 'expenses'. In 1996, I recall that I paid him approximately US$80 million (this large amount was attributable to the elections held that year), though that year was difficult for me as considerable funds were spent on privatisation. Then in 1997, I paid around $50 million and around the same amount in 1998, despite the shortage of cash caused by the financial crisis. In 1999, I also paid about US$50 million."

367. In cross-examination Mr. Abramovich supported this account:

> "A. It's almost always we had agreed in advance how much would be paid on an annual basis. Sometimes we were not able to pay the whole amount and then there was a spill-over for the next year.
>
> …
>
> A. What I mean is that we never had an arrangement whereby, for instance, we would let them -- all the $50 million -- let them have the 50 million together. The arrangement was that they issued requests and then in response to their requests we made the payments."

368. Thereafter payments would be demanded and made in the course of a continuous process of *ad hoc* negotiation, as Mr. Shvidler and Ms. Goncharova described. Most of the requests were oral. Sometimes Mr. Berezovsky would telephone Mr. Abramovich directly; sometimes Mr. Patarkatsishvili would telephone him and make the request on Mr. Berezovsky's behalf. Sometimes the request was for hard cash; sometimes it was for payment of particular bills or items of expenditure, whether for ORT, Mr. Berezovsky personally, or otherwise. Mr. Patarkatsishvili would call Ms. Goncharova on a daily basis with instructions for payment. Mr. Abramovich said that Mr. Berezovsky was only concerned about Mr. Abramovich's ability to pay and just assumed that he would pay whatever he asked. Mr. Berezovsky described the process in his oral evidence, as follows:

> "I never calculate numbers and my relations was absolutely simple: I made request directly to Abramovich or Shvidler or indirectly through Badri. If Abramovich was able to pay, calculating what is our interest, Badri and me together he paid that. If he was not able to do, he said 'Boris, we don't have money now to spend because we invest if to buy something or because company didn't generate this money'[190]."

[190] Berezovsky Day 6, pages 86-87.

> "I told Badri, 'Badri, we need that and that, for reason of ORT or for reason of charity or personal reason to buy jewellery for Elena', and Badri calculate with Roman what is opportunity to pay or not"[191]. [emphasis supplied]

369. Dr. Nosova's evidence also emphasised the *ad hoc* nature of the arrangements:

> "My understanding is that the way Boris received this money was very ad hoc. There was no single arrangement by which he would always receive money. Rather, he would identify some personal asset which needed to be paid for and would inform Badri or Mr. Abramovich or his team what it was and who the money needed to be paid to, and they would arrange it. This could, for example, be for jewellery for Elena Gorbunova, for real estate or whatever[192]."

370. Mr. Berezovsky acknowledged this was a partially correct description, but went on to suggest that it did not reflect the fact that Mr. Abramovich and Mr. Patarkatsishvili "calculate[d] the balance all the time". The cross-examination went as follows:

> "Q. That is a correct description, isn't it, of how this worked?
>
> A. This is partially correct description but it doesn't mean --
>
> Q. It's not partially correct --
>
> A. Sorry -- but it doesn't mean that it's incorrectly what I said before: that Badri and Roman calculate the balance all the time. This is the point, and this is a key point." [emphasis supplied]

371. Mr. Rabinowitz submitted that the point that Mr. Berezovsky was making was that, if Mr. Berezovsky asked for money, Mr. Abramovich would only pay it if Mr. Berezovsky and Mr. Patarkatsishvili were indeed owed that sum "calculating what is our interest." I do not accept Mr. Berezovsky's assertion that calculations were made, whether at the time payments were demanded (or at other times), of what, at any given moment in time, Mr. Berezovsky and/or Mr. Patarkatsishvili were entitled to receive by way of their alleged 50% profit share of Sibneft profits, or of the profits of Mr. Abramovich's Trading Companies. There was no evidence (apart from what Mr. Berezovsky said) that any such calculation process occurred. I accept Mr. Abramovich's evidence, as described in his witness statement, that he had meetings with Mr. Patarkatsishvili for the purpose of discussing Mr. Berezovsky's likely future financial requirements, not to calculate any profit share entitlement[193]. I also conclude that it may well have been, in the context of those discussions, that Mr. Abramovich and Mr. Patarkatsishvili discussed what Mr. Abramovich and his

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191 Berezovsky Day 6, page 92. See also Berezovsky Day 6, pages 80-82.

192 Nosova 2nd witness statement, paragraph 203.

193 Abramovich 3rd witness statement, paragraph 69.

Trading Companies were able to pay, and that this may well have involved a discussion, in general terms, about what Sibneft and Mr. Abramovich's companies were making, since what Mr. Abramovich could actually afford to pay would necessarily be dependent upon the cash flow of such companies. But I do not accept that, at any time, there were discussions calculating an agreed 50% profit share of the profits being made by Sibneft and/or Mr. Abramovich's Trading Companies. I do not accept Mr. Rabinowitz's submission that "… the Le Bourget transcript provides important direct contemporaneous evidence of exactly such discussions[194]". I address the transcript in greater detail below, but it provided no such confirmation.

372. Further evidence of the *ad hoc* nature of the process of requesting and making payments was found in the evidence relating to payments in connection with Mr. Berezovsky's French properties in December 1996. Mr. Berezovsky had purchased Chateau de la Garoupe at Cap d'Antibes, France, for FF55 million through a French company controlled by him, Société d'Investissements France Immeubles Sari ("SIFI"). The purchase of the Chateau, and subsequently of the antique furniture in it, and its redecoration, had been funded by payments from Mr. Abramovich's Trading Companies. These had been purportedly structured as loans, but it was common ground that there was no intention that such so-called loans should be repaid. Subsequently, in July 1997, an adjoining property, Clocher de la Garoupe, was also purchased by SIFI, for FF90 million, and was similarly funded. Mr. Jenni, Mr. Berezovsky's Swiss lawyer, described the "… rather chaotic system which evolved …" as "… a result of the constant demand for additional monies" to meet Mr. Berezovsky's expenses associated with his French properties. What happened was that Mr. Berezovsky's property agent, M. Bordes, would demand some payment from Mr. Jenni or his associate, Mr. Stiefel, who would pass the demand on to Mr. Shvidler. If Mr. Shvidler resisted it, as he sometimes did, Mr. Berezovsky would ring Mr. Patarkatsishvili so that he could contact Mr. Abramovich and demand that it be paid.

373. Other evidence showed that payments from Mr. Abramovich's Trading Companies, through an offshore corporate vehicle, also funded payment of Mr. Berezovsky's and his family's credit card expenditure between 1998 and 2000. Pavel Ivlev ("Mr. Ivlev"), a Russian lawyer, who worked in Moscow, dealt with Mr. Berezovsky's Russian tax affairs from 1997 onwards and fled Russia in November 2004, described the process. Although he suggested in his written evidence that the payments came from Sibneft, he admitted in cross-examination that he had never made "… any due diligence or any analysis of the source of funds". His concern was simply to ensure that the bills were paid[195].

374. It was common ground that, at the Dorchester Hotel meeting in March 2000, Mr. Deripaska asked Mr. Berezovsky to repay a debt that the latter owed him and that Mr. Berezovsky turned round to Mr. Abramovich and asked him to pay off the debt. It was duly paid. Mr. Berezovsky claimed that the funds to pay came out of his profit share entitlement, which was disputed by Mr. Abramovich. What is instructive, however, for the issue presently under consideration, is the manner in which an *ad hoc* demand was made by Mr. Berezovsky, and complied with by Mr. Abramovich

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194 See Mr. Berezovsky's First Schedule, page 12.

195 Ivlev Day 14, pages 99-100.

without, it would appear, any discussion as to what at that particular moment in time was either side's profit share.

No correlation demonstrated by the Bolshoi Balance

375. Seventh, I do not accept the submission made by Mr. Rabinowitz that the figures shown in the Bolshoi Balance for the payments made in 2000 to Mr. Berezovsky and Mr. Patarkatsishvili demonstrate a correlation between such payments and the financial performance of Sibneft and Mr. Abramovich's Trading Companies, thereby supporting Mr. Berezovsky's case that it was agreed that he and Mr. Patarkatsishvili should have a 50% profit share in the profits of Sibneft and those generated Mr. Abramovich's Trading Companies, as a result of Mr. Abramovich's involvement with, or acquisition of control of, Sibneft.

376. The FOM table of the Bolshoi Balance recorded the payments to Mr. Berezovsky or Mr. Patarkatsishvili in 2000. The Bolshoi Balance also included details of the payments received or made month by month by Mr. Abramovich's companies from the whole of his investments, including but not limited to the oil and aluminium businesses. In his witness statement Mr. Shvidler explained that he was never asked by Mr. Abramovich, Mr. Berezovsky or Mr. Patarkatsishvili at any time to provide them with a summary of Sibneft profits or trading group profits belonging to Mr. Abramovich, for the purpose of calculating what Mr. Berezovsky should be paid. He described the function of the Bolshoi Balance in the following terms:

> "131. As I have already explained, one of my key roles was to monitor the cashflow position in Mr. Abramovich's various businesses. I needed to know the state of our cash flow online. I recall that I asked Ms. Panchenko at the end of 1999, to have her team prepare for me a global cashflow balance and have it updated monthly. I wanted to be able to see at a glance the cash position of all the various projects. I remember explaining how I wanted the information presented. This cashflow information was known as the 'Bolshoi Balance' (literally the 'big' balance). I am aware that Ms. Panchenko regarded the presentation of the information in this way as 'accounting heresy' but it was a management and not an accounting tool. The Bolshoi Balance was not intended to provide information on profits and losses relating to specific projects but it did enable me to track cash effectively.
>
> 132. I understand that in the course of reviewing computers for the purposes of disclosure in this action, the Bolshoi Balance for 2000 plus similar information produced in 2001 and 2002 were located. As the Bolshoi Balance also contains a complete record of the payments made to Mr. Berezovsky and Mr. Patarkatsishvili in 2000-2002, we have disclosed the entirety of the documents, even though much of the information is unrelated to Mr. Berezovsky. This was

not a document prepared for him. We did, however, extract some of the information on this Bolshoi Balance into a separate table called the Fom table (short for 'Fomichev', a reference to Mr. Ruslan Fomichev) which summarised the payments made to Mr. Berezovsky and Mr. Patarkatsishvili. The Bolshoi Balance does not explain the sources of payments to Mr. Berezovsky and/or Mr. Patarkatsishvili but shows the availability of funds at a specific point in time within the companies relating to a given project.

…

146. It can be seen from the Fom table that in 2000, Mr. Berezovsky and Mr. Patarkatsishvili were paid a total of $491 million. This was a vastly different level of payments to that made in previous years but the year 2000 was different in a number of key respects. In previous years, Mr. Berezovsky was paid around $50 million each year (although in 1996 it was around $80 million). In 2000, I recall that the intention was to pay Mr. Berezovsky around $50 million but, as matters developed through the year, this amount increased. To the best of my knowledge, Mr. Abramovich did not fix the annual amounts according to any partnership share or accounting process because I am certain that he would have been asked me to obtain the relevant figures. I was never asked by Mr. Abramovich or Mr. Berezovsky/Patarkatsishvili at any time to provide them with a summary of Sibneft profits or trading group profits or profit from any other 'situation', project or group of assets belonging to Mr. Abramovich for the purpose of calculating what Mr. Berezovsky should be paid. My understanding was that from 1995 to 1999 all agreements regarding payment totals were made by reference to what Mr. Berezovsky needed to maintain ORT and his own status.

147. Things were different in 2000. At the beginning of 2000, Mr. Berezovsky was one of the most powerful men in Russia. His close friend Mr. Putin was the new President. By June/July 2000, however, I recall that Mr. Abramovich indicated that Mr. Berezovsky was going to need around $150 million for the year as I was asked to review whether we had available cash. I was not, however, asked by Mr. Abramovich or anyone else to 'account' for profits or provide any financial information for any other company or

business owned or controlled by Mr. Abramovich in agreeing any increase in the figure.

148. Around September/October 2000, things changed again with respect to Mr. Berezovsky's position following his public reaction to the *Kursk* submarine tragedy and I discuss this further below."

377. I accept Mr. Shvidler's evidence as set out in these paragraphs.

378. Mr. Rabinowitz submitted[196] that, in relation to the year 2000, there was clearly a correlation, between the amounts paid to Mr. Berezovsky and Mr. Patarkatsishvili, as shown in the Bolshoi Balance, and an amount of $900 million which (on Mr. Berezovsky's reading of the transcript of the recording of the discussion at the meeting at Le Bourget) was the approximate amount which Mr. Patarkatsishvili said had been made from Sibneft that year. Mr. Rabinowitz submitted that, accordingly, on Mr. Berezovsky's case, the amount paid to Mr. Berezovsky and Mr. Patarkatsishvili as a consequence should have been 50% of that – in the order of $450 million; and that the evidence demonstrated that they were paid a figure close to this sum. He relied upon:

i) Mr. Abramovich's own evidence to the effect that he agreed to pay Mr. Berezovsky $305 million plus $160 million in 2000, totalling $465 million[197]; a figure which Mr. Rabinowitz submitted was very close to the amount that would be paid as 50% of about $900 million;

ii) payments of this amount "tagged as being for Mr. Berezovsky as shown in the Bolshoi Balance: namely the PRB total of $461,367,441, at cell Q19";

a) from which fell to be deducted "two payments - $7,614,470 labelled "Bili [Mr. Patarkatsishvili] (loan)" and $16,271,042[198] labelled "payments (set-off against Al)" as connected to RusAl dealings, leaving a total payment of just under $437.5 million; and

b) to which fell to be added the PRBR section referring to cash payments of $3,670,500.

This, Mr. Rabinowitz submitted brought the total payments to Mr. Berezovsky and Mr. Patarkatsishvili up to about $441 million, which Mr. Rabinowitz submitted, was a figure "remarkably close to half of $900 million."

379. I deal below with the submissions made in relation to the Le Bourget transcript, but I do not accept the submission made by Mr. Rabinowitz that the figures shown in the Bolshoi Balance for the payments made in 2000 to Mr. Berezovsky and Mr. Patarkatsishvili demonstrate the correlation for which he contends. First, wherever Mr. Patarkatsishvili obtained the $900 million figure from, it bore no relation either to Sibneft's actual profits in 2000 ($675 million), or the net cash flow sums which the Bolshoi Balance records as having been received by

196 See paragraph 266 of Mr. Berezovsky's written closing submissions.
197 Abramovich 3rd witness statement, paragraph 232.
198 This was the $16 million related to the repayment of Mr. Berezovsky's debt to Mr. Deripaska.

Mr. Abramovich's oil-related businesses including ZATOs in 2000[199]. Indeed the commentary at paragraph 56 of the First Schedule to Mr. Berezovsky's written closing submissions specifically made the point that the

> "… [gross] receipts from oil trading companies and ZATOs in the year 2000 were just under $1.4536 billion. Payments to Mr. Berezovsky and Mr. Patarkatsishvili totalling approximated $490 million are less than half of that sum."

Second, the FOM table in the Bolshoi Balance shows that the pattern of payments to Mr. Berezovsky and Mr. Patarkatsishvili was erratic, in the sense that their timing and quantum bore no relation to the timing and quantum of the sums received by Mr. Abramovich's companies. Third, the figures in the Bolshoi Balance were cashflow figures, as Mr. Shvidler described. They were not sufficiently transparent to support Mr. Berezovsky's contention.

380. Accordingly, I do not accept Mr. Rabinowitz's submission that the payments made to Mr. Berezovsky and/or Mr. Patarkatsishvili were either actually calculated as 50%, or correlated to 50%, of Sibneft's profits and/or those generated indirectly from Mr. Abramovich's acquisition of influence and control of Sibneft, through his own Trading Companies.

The fact that payments were made to both Mr. Berezovsky and Mr. Patarkatsishvili not persuasive as support for Mr. Berezovsky's case

381. My eighth reason for rejecting Mr. Rabinowitz's arguments under this head is that I do not accept that the fact that payments were made to both Mr. Berezovsky and Mr. Patarkatsishvili was persuasive support for Mr. Berezovsky's case. It was common ground on the evidence that it was Mr. Patarkatsishvili who controlled the payments and generally handled the "commercial side" of Mr. Berezovsky's affairs. It was also common ground that both Mr. Patarkatsishvili and Mr. Berezovsky would make requests for payments and that payments were made to one or other or both of them (whether in cash or otherwise, and whether directly or indirectly to entities or persons associated with them) pursuant to Mr. Abramovich's arrangements with Mr. Berezovsky.

382. However, on the evidence before the Court, a precise breakdown of the distribution of the payments as between Mr. Berezovsky and Mr. Patarkatsishvili was not possible. This was because payments were generally made to accounts designated on Mr. Berezovsky's behalf, which were either those of nominee companies whose exact beneficial ownership was not apparent, or else those of third party payees who had provided goods or services to Mr. Berezovsky or Mr. Patarkatsishvili or to ORT. Even in 2000, when some payments were, possibly, allocated in the Bolshoi Balance to either Mr. Berezovsky or Mr. Patarkatsishvili (although even this was unclear on the evidence before me), it was possible that amounts were redistributed between the two of them after receipt.

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[199] The "BS" (i.e. oil industry) Balance for 2000 was shown as $1.386bn. This appears to have been a net figure after deducting payments.

383. In the circumstances, I am not persuaded by Mr. Berezovsky's argument that the fact that payments were made to both Mr. Berezovsky and Mr. Patarkatsishvili is inconsistent with Mr. Abramovich's *krysha* allegation and supports Mr. Berezovsky's partnership allegation. Mr. Abramovich's evidence explained Mr. Patarkatsishvili's role and involvement, and Mr. Abramovich's (limited) understanding of the association between him and Mr. Berezovsky. I accept Mr. Abramovich's evidence that Mr. Patarkatsishvili clearly did provide *krysha* type services, not only in relation to RusAL but also in relation to Sibneft – for example "persuading" Mr. Ovodenko to withdraw Sameko's bid in the loans-for-shares auction. If there had been any evidence of periodic, or indeed any, calculations as to what was due in respect of "the partners'" alleged 50% or calculation of what was each of their respective profit shares, the submission might have had more force. But the reality was that the manner in which monies required by Mr. Berezovsky were demanded, negotiated and paid had all the hallmarks of *krysha* type payments, and not payments of a specific profit share to either man.

x) The Le Bourget transcript

Background

384. Unknown to both Mr. Berezovsky and Mr. Abramovich, Mr. Patarkatsishvili recorded the meeting attended by all three men at Le Bourget on 6 December 2000. In December 2009 Mr. Berezovsky purchased the audio recording from an intermediary, whose identity he was unwilling to disclose on grounds of concern for the physical safety of such person. Under the terms of Mr. Berezovsky's agreement with the intermediary, the latter stands to make an enormous financial gain in the event that Mr. Berezovsky were to win this litigation; the deal gives the intermediary 5% of Mr. Berezovsky's winnings. A transcript of the recording was first disclosed by Mr. Berezovsky on 3 December 2010; the audio recording was first provided on 5 January 2011. The original transcript, which was wrongly dated, contained errors of transcription and translation (which have since been corrected). The recording itself contains gaps and sound distortions. Mr. Rabinowitz criticised Mr. Abramovich for not admitting the authenticity of the recording or transcript, or even that the Le Bourget meeting had taken place, until his third statement served on 31 May 2011. I do not consider that, in the circumstances surrounding the production of the recording, such criticism was well-founded.

385. The meeting took place over ten years ago and, accordingly, actual recollections of the content of the meeting (and its date) were bound to be limited, as both Mr. Berezovsky and Mr. Abramovich acknowledged in their evidence. Indeed Mr. Berezovsky said that he did not remember the meeting at all before receiving the recording. I do not find it surprising that Mr. Abramovich (or his legal team) considered it necessary to subject the recording to forensic examination and consideration of its contents before accepting it as authentic, nor that it took them five months to do so.

386. Before I consider the respective submissions of the parties as to what the Le Bourget transcript shows, it is necessary to say something about the transcript itself and the factual context in which the meeting took place. A transcript of the recording, in translation, together with Mr. Berezovsky's and Mr. Abramovich's respective

commentary on each statement made, was supplied to me[200]. Necessarily both men's commentary was *ex post facto* reconstruction – no doubt with the benefit of assistance from their respective lawyers. The transcript is difficult to follow. Much of it is rambling and obscure, and its meaning depends critically on the context. One cannot construe the discussion in the way that one might construe a series of e-mails or a commercial document. One suspects that many contemporary nuances of the conversation may well have been lost in translation.

387. Many of the exchanges are incomprehensible, unless one had an understanding of the previous discussions between Mr. Abramovich and Mr. Patarkatsishvili (or in some cases Mr. Ruslan Fomichev). Moreover, as he acknowledged in his cross-examination, Mr. Berezovsky's understanding of the context of the discussion was very limited at the time, because he left the management of his financial affairs to others (i.e. Mr. Patarkatsishvili and Mr. Fomichev) and knew little or nothing about recent discussions between Mr. Abramovich and Mr. Patarkatsishvili. It was therefore difficult, as he acknowledged, for him to follow what Mr. Abramovich and Mr. Patarkatsishvili were talking about[201]. His assertions as to what particular passages in the transcript meant had therefore to be treated with particular caution. Mr. Abramovich's comments were also, to a certain extent, reconstructional, as he accepted. I approached his commentary with similar caution, but he at least was directly involved in the financial discussions with Mr. Patarkatsishvili both before and during the meeting.

388. By the time of the Le Bourget meeting, Mr. Berezovsky was an exiled fugitive living in France; Mr. Patarkatsishvili in his turn was to become an exile in April 2001, when he left Russia and went to live in Georgia, although his relations with Mr. Putin in December 2000 were apparently still amicable. Mr. Abramovich explained that his relationship with Mr. Berezovsky changed after the *Kursk* tragedy of August 2000. Mr. Abramovich took the view that the former had taken an overtly hostile and one-sided stance in using the media which he controlled, to exploit a public tragedy of that sort to further his own political agenda against the government. Mr. Abramovich had made clear to Mr. Berezovsky what his views were. As he did not openly disagree with Mr. Berezovsky very often, this fact had adversely affected their relationship, and thereafter they almost stopped meeting in person and Mr. Abramovich increasingly dealt with Mr. Berezovsky through Mr. Patarkatsishvili.

389. The principal purpose of the meeting was to discuss the mechanics of how to structure the ORT share sale and the state of the mutual accounting as between Mr. Abramovich on the one hand and Mr. Berezovsky and Mr. Patarkatsishvili on the other. Both Mr. Berezovsky and Mr. Patarkatsishvili were concerned by this stage that the vast sums of money that were required to fund their lifestyles should be received by them out of Russia. They were concerned, for example, as to whether exchange control would be given to remit the proceeds of the sale of their ORT shares outside Russia. Previously, Mr. Berezovsky and Mr. Patarkatsishvili had received an income stream from two non-Russian sources. One was Andava SA, which from 1996 had taken on the role of a treasury vehicle for Aeroflot. As I have already described, Andava produced an income stream for Mr. Berezovsky which was derived

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200 It comprised some 234 pages and tabulated every statement by each of the three men at the meeting in a numbered box.

201 Berezovsky Day 7, page 5.

from Aeroflot's dealings with Andava in Switzerland. But, by 2000, that income stream had dried up, not least because of the allegations by the Russian public prosecutors that the Andava monies had been misappropriated by Mr. Berezovsky from Aeroflot, and the charges against Mr. Berezovsky which had led to his flight from Russia in October 2000. The other providers of funds to Mr. Berezovsky outside Russia were the Runicom companies, which had been used to pay most of the sums which Mr. Berezovsky had received from Mr. Abramovich, including in particular the sums he received for buying and doing up the properties on the Cote d'Azur.

390. But, as Mr. Abramovich explained at the Le Bourget meeting, the Russian government had announced certain changes to the Russian tax system, as a consequence of which, the oil businesses of his Trading Companies (through which he had previously made most of the payments to Mr. Berezovsky and Mr. Patarkatsishvili) were going to be consolidated into Sibneft; in future, therefore, Mr. Abramovich's main source of income would be dividends declared by Sibneft. These could be paid only twice a year and would be subject to Russian tax, making it more difficult for him to pay Mr. Berezovsky and Mr. Patarkatsishvili. Payments would also be visible to the Russian authorities, a potential problem now that Mr. Berezovsky was a fugitive from Russia[202].

391. From the beginning of 2000, and well before Mr. Berezovsky left Russia in October 2000, he and Mr. Patarkatsishvili had been trying to transfer their assets into offshore structures in the West. As he accepted in his evidence, by December 2000 he and Mr. Patarkatsishvili were certainly aware of the money-laundering regulations in force in most Western jurisdictions, and the consequent need to obtain documentary explanation of the origins of any payment in order to satisfy money-laundering enquiries from transferee banks or asset managers. Indeed the evidence of Mr. Ivlev (one of Mr. Berezovsky's witnesses) was to the effect that Western financial institutions were, at that time, more than usually sensitive in relation to the transfer of substantial monies from wealthy Russians, because of the scale on which such Russians were attempting to transfer monies out of Russia. They were particularly so in relation to Mr. Berezovsky. Mr. Ivlev said:

> "I mean, at that time again these issues of suspicion on the side of the foreign banks towards money-laundering operations of Russians was really widespread, so every time we were facing extreme level of control from the banks. So they had to be really satisfied in order to proceed with the money originated or belonged to wealthy Russians. And, you know, Berezovsky was an extreme case. Everybody knew that he is a - he just became an enemy of the state, left the country. So it was in the air, it was in the media at that time."

392. Thus, it was critical that any future payments made to Mr. Berezovsky and Mr. Patarkatsishvili (whether, as Mr. Berezovsky contended, in respect of their interest in Sibneft, or as Mr. Abramovich contended, by way of *krysha* payments), should be documented and capable of satisfying the stringent money-laundering

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202 Abramovich Day 20, page 68.

enquiries that they knew they would be bound to face from recipient financial institutions.

393. So any analysis of what the Le Bourget transcript establishes has to be conducted against the fact that, at the time, Mr. Berezovsky and Mr. Patarkatsishvili would have been particularly concerned to ensure that the necessary documents were generated to "legalise" (which was the word they used) their receipts of payments from Mr. Abramovich's companies. Indeed their concern was borne out by the fact that subsequently there were official or judicial enquiries into allegations of money-laundering by Mr. Berezovsky and/or Mr. Patarkatsishvili in Switzerland, The Netherlands, France and Brazil, in addition to Russia itself.

Mr. Berezovsky's submissions

394. Mr. Rabinowitz submitted that the Le Bourget transcript was:

> "… plainly a key if not the key piece of evidence before the court in relation to a number of issues"

including the alleged 1995 Agreement. He and his team conducted a microanalysis of the transcript and submitted that it provided very valuable assistance in assessing where the truth lay as regards the 1995 and 1996 Agreements and the ownership of Sibneft. He submitted that the transcript demonstrated:

i) that payments made to Mr. Berezovsky and Mr. Patarkatsishvili had been in the past – and were planned to continue to be in the future – calculated by reference to the profits that Mr. Abramovich was making from his ownership and control of Sibneft;

ii) that Mr. Abramovich acknowledged Mr. Berezovsky and Mr. Patarkatsishvili's interest in Sibneft; and

iii) that Mr. Berezovsky and Mr. Patarkatsishvili wished to formalise ("legalise") their interest in Sibneft, but that Mr. Abramovich was resisting this.

395. A number of evidential points were relied upon by Mr. Rabinowitz. It is not necessary or feasible for me to deal with them all. In my judgment the transcript did not provide the support for his case which Mr. Berezovsky contended.

References to $30 million coming from "aluminium" - Box 29 and following

396. The beginning of the meeting was spent discussing the sums which Mr. Abramovich owed to Mr. Berezovsky and Mr. Patarkatsishvili. Mr. Abramovich came to the meeting with a spreadsheet (which no longer survives) which set out what had been paid, and what was still owing. In his third witness statement and in his commentary to the transcript, Mr. Abramovich gave evidence to the effect that there had previously been an agreement between Mr. Abramovich and Mr. Patarkatsishvili in September or October 2000 that Mr. Abramovich would pay Mr. Berezovsky a sum of $305 million. Mr. Abramovich's evidence was that this agreement had been made in October, when Mr. Berezovsky's position in Russia was becoming increasingly

difficult and his finances were strained. Mr. Patarkatsishvili asked for a large payment to keep "for a rainy day"[203].

397. Mr. Rabinowitz attacked this evidence on the grounds that, in cross-examination, "extraordinarily" Mr. Abramovich had admitted that he had no actual recollection of any agreement to pay $305 million and that, in re-examination, he was asked for further details of the proposal and purported to provide them, despite the fact that he said he could not remember. I do not accept this criticism. First of all, it was clear from Mr. Abramovich's evidence and his reference to reconstruction, that his memory had been jogged by what he had read in the Le Bourget transcript. Second, Mr. Abramovich's evidence about the amount and the timing was borne out by the Bolshoi Balance, which shows a significance increase in the payments made to Mr. Berezovsky from October 2000. Although the transcript records Mr. Patarkatsishvili initially complaining that he and Mr. Berezovsky had at that stage received only $100 million out of the $305 million, subsequently the transcript shows that he accepted that in fact only $85 million was outstanding. Third, Mr. Rabinowitz's reference[204] to Mr. Abramovich's re-examination was an error; the passage quoted was dealing with a different matter.

398. Moreover, in cross-examination[205] Mr. Berezovsky accepted that, prior to the Le Bourget meeting, Mr. Abramovich and Mr. Patarkatsishvili had "definitely discussed" and agreed that Mr. Berezovsky and Mr. Patarkatsishvili were going to be paid the sum of $305 million, although Mr. Berezovsky did not accept that the reason for the breakdown of the figure into $275 million and $30 million was that $275 million was going to be funded from Mr. Abramovich's oil trading operations and $30 million from his aluminium operations. He asserted that the two figures represented his and Mr. Patarkatsishvili's profit share from the two businesses.

399. Thus Mr. Berezovsky contended that the references in the Le Bourget transcript to $30 million being described as coming from "aluminium" demonstrated that what was being discussed was his and Mr. Patarkatsishvili's entitlement to $30 million of profits from their investment in RusAl and $275 million of profits from their investment in Sibneft, which supported his case. Mr. Abramovich was cross-examined to that effect. In support of this contention Mr. Rabinowitz submitted that, whilst it made perfect sense for Mr. Abramovich to have identified how much money was due from each of the oil and aluminium investments, if the other two men were indeed his partners, it was impossible to see why Mr. Abramovich should have identified the source of the money, if there was really just an agreement to make a *krysha* payment of $305 million.

400. I do not agree that the passages relating to this discussion in the Le Bourget transcript demonstrate that Mr. Abramovich was referring to, or recognising, any contractual entitlement of Mr. Berezovsky's and Mr. Patarkatsishvili's part to share in Sibneft's or RusAl's profits. The wording in the transcript, neither in itself, nor in context, is sufficiently clear to support such an interpretation. Moreover, I accept Mr. Abramovich's evidence, as given in his commentary on the transcript and in cross

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[203] Abramovich 3rd witness statement, paragraph 204; Abramovich Day 20, page 50.
[204] At paragraph 291 of Mr. Berezovsky's written closing submissions.
[205] Berezovsky Day 7, page 8.

examination[206], that, when he had agreed with Mr. Patarkatsishvili earlier in the year to pay $305 million, Mr. Abramovich had indicated that it would be difficult to find such a large sum and Mr. Patarkatsishvili had asked where the money was going to be coming from, as he wanted to satisfy himself that the money would indeed be paid. In the circumstances, such a question was not a surprising one (although Mr. Rabinowitz described it as a "ludicrous suggestion"), since the sum was far larger than any which Mr. Berezovsky and Mr. Patarkatsishvili had previously been paid. Mr. Abramovich's evidence was that he mentioned the $275 million and $30 million as being respectively sourced from his oil trading businesses and his aluminium businesses, and that the spreadsheet which he had brought to the meeting recorded the internal breakdown as to the source from which the funds derived. I do not find it in the least surprising that Mr. Patarkatsishvili might have been interested in the cash flows of the oil and aluminium operations; in making his demands for *krysha* payments, he might well have been assisted in pitching the demand at the right level, if he knew what quantum of payment the businesses could service. As indicated above Mr. Rabinowitz could not demonstrate any correlation between the cash flow figures for the oil and aluminium operations as contained in the Bolshoi Balance and the $305 million as representing 50% of such profits for the year 2000.

401. Accordingly I reject Mr. Rabinowitz's submission in this respect.

References to the possibility of Mr. Berezovsky and Mr. Patarkatsishvili being registered as shareholders in Sibneft and receiving dividends

402. Mr. Rabinowitz submitted that the discussion in the Le Bourget transcript relating to the possibility of Mr. Berezovsky and Mr. Patarkatsishvili being registered as shareholders in Sibneft and receiving payment of dividends strongly supported Mr. Berezovsky's case.

403. From Box 450 there was a section of the discussion which addressed a question raised by Mr. Patarkatsishvili about how he and Mr. Berezovsky should plan for the next year. As explained by Mr. Abramovich, the government had announced the withdrawal of certain tax reliefs from oil companies, which would result in additional tax liabilities for his companies. In consequence, the oil businesses of his Trading Companies (through which he had previously made most of the payments to Mr. Berezovsky and Mr. Patarkatsishvili) were going to be consolidated into Sibneft; in future, therefore, Mr. Abramovich's main source of income would be dividends declared by Sibneft. These could be paid only twice a year and would be subject to Russian tax, making it more difficult for him to pay Mr. Berezovsky and Mr. Patarkatsishvili.

404. The passages upon which Mr. Rabinowitz relied in this context ran from Box 458 and following. The transcript records the discussion between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili as follows:

> "Box 458: A. So, nevertheless, next year there'll be only one way for us to get the money: legally, through paying taxes, dividends. We'll be able do it twice a year. During the first six months,

[206] See, for example, Abramovich Day 20, pages 50-51.

and then in the course of the second half of the year. And all shareholders who are also commercial directors, will receive it. Nnn... and all the other, minority shareholders. Absolutely everyone will receive it, based on the portfolio.

Box 459: P: (So shall we legalise our income then?)

Box 460: A. the idea is that we should legalise this process, that's the idea. To say that this portfolio belongs to so-and-so, this one -- to so and so ... and if you trust me, I shall do it in such a way so as not to have few visible ... if you don't trust [me], then you need to (get some valuations, some prices). There can be no official agreements between us. Well, first of all, it is forbidden. Secondly, there is no way not to break these agreements. In other words, the moment you decide you want to break them, you have the right to break them, and legally you ... all this is (nothing).

Box 461: P: I am trying to ... nnn.

Box 462: A. Well, then everyone will achieve the result for the sake of which all this was done, except for us. Because the shares ... nnn. (wanted to) make your participation that. nnn.

Box 463: B: Nnn ... (not like that now).

Box 464: A. Borya, what is not like now?

Box 465: B: Well, it wasn't like that we (used to do it).

Box 466: A. Borya, yes, exactly like that. Well, now we shall once again be arguing over ... nnn.

Box 467: B: Nnn...

Box 468: P: We can suggest another, we can suggest another option ... nnn ... yes. Another option, whereby a bank would participate instead of us. "

405. Mr. Berezovsky's case[207] was that in 2000 he wished to have his existing interest in Sibneft formalised. Mr. Berezovsky contended[208] that in the above passage Mr. Abramovich was talking about how the various portfolios of shares in Sibneft

[207] See, for example, paragraph 294 of Mr. Berezovsky's written closing submissions.
[208] See, for example, paragraph 229(3) of Mr. Berezovsky's opening submissions.

would have to be held in the future, and that Mr. Abramovich was saying that, if they trust him, he will front Mr. Berezovsky and Mr. Patarkatsishvili's shares so as not to have them visible as shareholders in Sibneft; if they do not trust him and insist on becoming visible shareholders, Mr. Berezovsky and Mr. Patarkatsishvili would have to buy him out of Sibneft - since (as he explained later, in Box 496), if their shareholdings in Sibneft were to become visible, Sibneft would be destroyed. But Mr. Berezovsky's case in relation to Sibneft was premised on the assertion that Mr. Abramovich had been "fronting" his and Mr. Patarkatsishvili's interests since 1996; the suggestion that in this part of the conversation Mr. Abramovich was only now offering to front their shareholding for them in future[209], was inconsistent with such a case. It was put to Mr. Abramovich that Box 460 showed that he was unwilling to arrange for Messrs. Berezovsky and Patarkatsishvili formally to be shown as shareholders. But, as Mr. Abramovich explained in cross-examination, what he was saying was that only shareholders would be entitled to dividends, and that, because he was a shareholder, he would continue to make the *krysha* payments to them but only out of the dividends which he received. As he also pointed out in cross-examination, he referred to the fact that their *krysha* relationship was prohibited[210]. It was also worthy of note that nowhere in the transcript do either Mr. Berezovsky or Mr. Patarkatsishvili assert that they had previously agreed with Mr. Abramovich that he would transfer shares in Sibneft to them upon their request, as Mr. Berezovsky alleged had been agreed in 1996.

406. In relation to what was a partially inaudible Box 462, Mr. Abramovich's evidence was that he was referring to a previous proposal made by Mr. Fomichev for legalising Mr. Berezovsky's and Mr. Patarkatsishvili's receipts from Mr. Abramovich, by transferring Sibneft shares to them, or to a bank acting as their nominee, so that they could have a documented right to receive dividends by way of cover for the payments that Mr. Abramovich was making to them; this proposal was unacceptable to Mr. Abramovich not only because it would have made them owners of a substantial proportion of Sibneft which, according to him, they had no right to be, but also that, by this date, he had no wish to increase Sibneft's association with Mr. Berezovsky, by now a fugitive from Russian justice.

407. Mr. Rabinowitz submitted that Mr. Abramovich's evidence about the alleged Fomichev proposal was incredible and

> "… no more than an attempt to deny the clear evidence to be taken from the Le Bourget transcript: that Mr. Berezovsky and Mr. Patarkatsishvili were already entitled to 50% of Mr. Abramovich's stake in Sibneft, and simply wanted to formalise that entitlement." [Emphasis in original]

408. He subjected the evidence to a detailed critique as to the manner in which he alleged that Mr. Abramovich had changed his case in this respect. Mr. Berezovsky also apparently relied[211], in this context, on Mr. Fomichev's evidence in what was referred

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209 Mr. Berezovsky's written opening, paragraph 229(3).

210 Abramovich Day 20, pages 83-84.

211 See, for example, Mr. Berezovsky's commentary on paragraph 59 (5) of Mr. Abramovich written closing submissions.

to as the *North Shore* litigation[212], to the effect that he understood Mr. Berezovsky and Mr. Patarkatsishvili to have an unregistered interest in Sibneft. That was, however, a different point, which I address below. At Le Bourget, Mr. Abramovich was addressing a proposal that Mr. Berezovsky and Mr. Patarkatsishvili should become registered shareholders of Sibneft. Mr. Berezovsky did not call Mr. Fomichev, not only because he said that he could not rely on him to tell the truth, but also because the judgment debt to Mr. Berezovsky's company owed by Mr. Fomichev remained outstanding.

409. I reject Mr. Rabinowitz's submission on this point and accept Mr. Abramovich's evidence about Mr. Fomichev's proposal and the subject matter of the discussion. But in any event, the passages relied upon in the transcript simply are not clear enough to support Mr. Berezovsky's case that these passages demonstrate an acceptance or recognition on Mr. Abramovich's part of an existing, albeit unregistered, 50% interest, or entitlement to such an interest, in Sibneft vested in Mr. Berezovsky and Mr. Patarkatsishvili.

410. There then follows from Box 468 onwards various discussions about Mr. Berezovsky and Mr. Patarkatsishvili becoming registered shareholders in Sibneft, whether through the nomineeship of a Western bank or otherwise. Mr. Abramovich was clearly reluctant for this to occur because of the adverse effect that any public association of the two men as registered shareholders of Sibneft would have on the company. Mr. Berezovsky contended that these passages were only consistent with him and Mr. Patarkatsishvili having existing interests in Sibneft. For example, he referred to Box 495, where he said "… but this does not mean my legalisation, and this is the heart of the problem". He relied on this as demonstrating that he wanted his existing stake in Sibneft formally recognised. I am unable to accept this analysis of the transcript. In so far as anything is clear from what (at least in translation) appears to be a disjointed and incompletely recorded conversation, that is difficult to follow, Mr. Berezovsky and Mr. Patarkatsishvili's concerns appear to be centred on the "legalisation" of their income stream; in other words their need to receive future funds from Mr. Abramovich legally in Western bank accounts with some plausible and innocent explanation of their origins. It is in that context that the men were discussing the possibility of Mr. Berezovsky and Mr. Patarkatsishvili becoming registered shareholders. Whilst the transcript shows that Mr. Berezovsky and Mr. Patarkatsishvili considered they had an entitlement to receive future payments from Mr. Abramovich and every expectation of doing so, the language used goes nowhere near to recognising some existing contractual or beneficial entitlement to a 50% shareholding interest in Sibneft.

411. Mr. Rabinowitz pointed to the various references to dividends in the discussions between Mr. Abramovich and Mr. Patarkatsishvili, particularly at Box 519 to 541 and then from Boxes of 587 to 592. He submitted that these discussions were only consistent with word "dividends" being used in the conventional sense and that Mr. Abramovich's attempt in his commentary on the transcript to characterise Mr. Patarkatsishvili's use of the word as a reference to *krysha* payments was "utterly implausible." Mr. Rabinowitz submitted that the only analysis of the transcript in these passages was that this was a discussion between shareholders as to the dividends

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212 These were proceedings in which Mr. Berezovsky was suing Mr. Fomichev for repayment of a loan in excess of $52 million.

that "we" (i.e. the three men) would be entitled to receive, and would be receiving, from Sibneft.

412. But my reading of the transcript, coupled with the evidence from Mr. Berezovsky and Mr. Abramovich, leads me to no such conclusion. It was not surprising that Mr. Patarkatsishvili was interested in the likely quantum of Sibneft dividends, and in the manner in which they would be paid, given that Mr. Abramovich had previously explained that the only way of his (i.e. Mr. Abramovich) deriving revenue in 2001, and consequently paying Mr. Berezovsky and Mr. Patarkatsishvili their required income stream, would be out of dividends declared to him by Sibneft. Nor, on Mr. Abramovich's case, would it have been at all surprising for Mr. Patarkatsishvili to have been keenly interested in how much Sibneft would be declaring by way of dividends, since not only would they have provided the means by which he and Mr. Berezovsky would be paid, but also, no doubt, would have determined how much Mr. Patarkatsishvili could demand and expect Mr. Abramovich to agree to pay. Indeed Mr. Abramovich said as much when accepting in cross-examination that, at least to some extent, the amount of Sibneft dividends would determine how much Mr. Berezovsky and Mr. Patarkatsishvili would receive in the year; he said[213]:

> "… one could say that they can't demand from me more than the company can make. To some extent, yes, you can make this conclusion …"

413. When reading the transcript one also has to remember that, at various stages, the parties go back to discussing what, at that stage, was only a proposal that the two men might become formally registered as shareholders, as well as other alternative mechanisms for paying monies to them. The fact that Mr. Patarkatsishvili refers, for example, at Box 540 to dividends in the following way:

> "… how will it work out that we will be able to receive dividends? If we are not shareholders?"

is not surprising in the context of the preceding discussions. Although on one view his reference to "[how]we will be able to receive dividends?" could be read as a reference to a "beneficial" entitlement to dividends, I conclude that in context the language used is equivocal; it is just as likely that he was simply referring to how he and Mr. Berezovsky were going to get their regular *krysha* payments. Similar comments may be made about other passages relied upon by Mr. Rabinowitz. The whole tenor of the transcript is far too vague to bear the evidential weight which Mr. Rabinowitz seeks to place upon it, as supporting Mr. Berezovsky's case.

414. Likewise, I was not persuaded that Mr. Patarkatsishvili's (or indeed Mr. Abramovich's) use of the pronoun "we" in various passages in the transcript went anywhere near demonstrating unequivocal, or indeed any real, support for Mr. Berezovsky's case. Mr. Abramovich's evidence was that Mr. Patarkatsishvili mixed up the singular and plural pronouns[214], and that both Mr. Abramovich and Mr. Patarkatsishvili used the pronoun with different meanings[215]. Even if one can

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213 See Abramovich Day 20, page 105.
214 Abramovich Day 20, page 113; Day 20, page 116.
215 Abramovich Day 20, page 114.

infer from the transcript some sort of proprietorial attitude displayed by Mr. Patarkatsishvili and Mr. Berezovsky to the oil operations, that is not inconsistent with Mr. Abramovich's case. As Mr. Sumption submitted, it is in the nature of the concept of *krysha*, that both Mr. Berezovsky and Mr. Patarkatsishvili might have regarded Sibneft as "theirs" in the sense that the company could not have been created or prospered without the protection that they provided. As Mr. Sumption accepted, some of Mr. Patarkatsishvili's statements in the transcript, certainly suggest not only a sense of entitlement on his part to participate in the profits being generated by Sibneft, but also a feeling that the more money Mr. Abramovich was making, the more he could be required to pay to Mr. Berezovsky and Mr. Patarkatsishvili. However, in my judgment, the transcript itself does not in any way reveal whether such apparent feeling of entitlement was based on a *krysha* type relationship, some other deal or arrangement between the three men, or a contractual entitlement to an ownership interest in shares in Sibneft and/or to a participation in its profits or those made by Mr. Abramovich's Trading Companies as a result of Mr. Abramovich's acquisition of control of Sibneft.

Mr. Abramovich's references to 44% of the Sibneft shares being held "in trust with the management"

415. In the Le Bourget transcript various references were made by Mr. Abramovich to 44% of the Sibneft shares being held "in trust with the management". Thus for example, at Boxes 468 to 470 there is the following passage, starting with a proposal by Mr. Patarkatsishvili that a bank should become a shareholder in Sibneft as Mr. Berezovsky's and his nominee:

> "Box 468: P: We can suggest another, we can suggest another option ... nnn ... yes. Another option, whereby a bank would participate instead of us. "
>
> Box 469: B: To which we shall entrust management. Nnn ... (a small country)... (so that) a bank participated ... nnn ...
>
> Box 470: A. now you are willing to say, that... nnn... I am saying that... nnn... holding... 44 holding, there are 40 percent, which I once talked about (myself), are under my control, but I don't own it. And the other holding there, about 90 percent, it is in trust with management. Are you happy with such a set up? Then you can... nnn...

416. And at Box 540-541, the three men returned to the question how, if Mr. Berezovsky and Mr. Patarkatsishvili were not to become Sibneft shareholders, they might be able to receive money from Mr. Abramovich in the future, given the changes that the latter had explained earlier:

> "Box 540: P: And how will it work out, if at the moment it's ... how will it work out that we'll be

able to receive dividends? If we're not shareholders?

Box 541: A. Why? We can take these dividends out assigning them to a company, and later we can disperse them very thinly. Pay taxes... nnn... management, 44 per cent is in a management-controlled trust. [The dividends] are taken out, taxes are paid, after that they [the dividends] are dispersed through different routes.

417. Mr. Rabinowitz submitted that these passages clearly showed that Mr. Abramovich was explaining to Mr. Berezovsky and Mr. Patarkatsishvili that their 44% interest in Sibneft (namely half of the total of 88% of the share capital of Sibneft, which Mr. Abramovich directly or indirectly held at the time), which they then owned under the terms of the alleged 1995 Agreement and the alleged 1996 Agreement, was held in a trust; and that the 44% described as being held in trust "in a management-controlled trust" was the half that was being held for Mr. Berezovsky and Mr. Patarkatsishvili. He submitted that when Mr. Abramovich, as recorded in Box 470, even went so far as to ask Mr. Berezovsky: "are you happy with such a setup?", that could only make sense where the manner of how shares were held was relevant to Mr. Berezovsky, which could not have been true of a *krysha* relationship. Mr. Rabinowitz also submitted that Mr. Abramovich gave misleading evidence to the court, both in his commentary on the Le Bourget transcript and in his cross-examination, for the specific purpose of obscuring the real position relating to Mr. Berezovsky's and Mr. Patarkatsishvili's ownership of their 44% interest.

418. Mr. Abramovich was cross-examined at considerable length about this matter. Mr. Shvidler and Ms. Panchenko also gave extensive evidence about the trust structures which (at this time) held, directly or indirectly, effectively 88% of Sibneft, through intermediate holding companies. The position was confirmed by a statement made by Mr. Sumption on instructions, which was not challenged. There were two successive trusts: a Liechtenstein foundation operative between 1999 and 2001; and a Cyprus trust operative from 1 March 2001. The beneficiaries of the Liechtenstein foundation were Mr. Abramovich and, on his death, his children. The foundation had the power to add Mr. Abramovich's relatives to the list of beneficiaries, provided that there was the consent of the protector, Mr. Shvidler. There was also power to alter the regulations governing the foundation to change the beneficiaries, provided Mr. Abramovich consented. The beneficiaries of the Cypriot trust were Mr. Abramovich, and, on his death, his children. The trustees had power to add anybody as a beneficiary provided the protector, Mr. Shvidler, consented. The trustees were Ms. Panchenko, Mr. Tenenbaum and a lawyer, Mr. Demetris Ioannides. The trust arrangements covered the whole of Mr. Abramovich's Sibneft holding. I was not however provided with the relevant trust deeds.

419. It was clear from the evidence given by both Mr. Abramovich and Mr. Shvidler that in public statements at the time Mr. Abramovich was keen to disguise the fact that (according to him) he was the ultimate sole beneficial owner of 88% of the shares in Sibneft. In order to do so, Mr. Abramovich and Mr. Shvidler adopted a standard formula, namely that Mr. Abramovich controlled half of the 80% shareholding, and that the other half was controlled by "a management trust". Both Mr. Abramovich

and Mr. Shvidler said that, for security reasons, Mr. Abramovich never wanted to say publicly that he owned all the shares in Sibneft; so he always said that he controlled half, with half being controlled by "the management". This misleading stance was also adopted in contemporaneous press interviews; see for example an interview with Mr. Shvidler published in Petroleum Intelligence is Weekly in November 2000, where he was quoted as saying

> "First, I would like to say that Sibneft is a separate oil company not mixed up with the aluminium interests with our shareholders. As for the list of shareholders, Roman Abramovich controls about a 40% stake, a similar amount is controlled by the company's top management, while the rest is in free float."

420. I have no doubt that Mr. Abramovich's security concerns were genuine. They were supported by the evidence of Mr. Anisimov, who explained in his evidence that, given the prevailing circumstances in Russia at the time, he too had concerns about publicly disclosing his control of his businesses.

421. The euphemism about half of the Sibneft stake being controlled by "management" was untrue in the sense that, in reality:

i) the entirety of Mr. Abramovich's indirect share holding in Sibneft was held in trust;

ii) that, as lifetime beneficiary of the relevant trust, he was no doubt in a position to exercise considerable control over the shares (although there was no evidence before me as to what the precise position in respect of control actually was, under Liechtenstein or Cypriot law); and

iii) as lifetime beneficiary, he was no doubt entitled to enjoy the economic interest in the shares (subject, of course, to such, if any, entitlement of Mr. Berezovsky and Mr. Patarkatsishvili).

In a certain respect, the euphemism could be said to be partially true, in that the protector of the Liechtenstein and Cypriot trusts, Mr. Shvidler, and two of the trustees of the Cypriot trust, Ms. Panchenko and Mr. Tenenbaum, were representatives of the management of Sibneft.

422. Whilst the fact that Mr. Abramovich and Mr. Shvidler were prepared to misrepresent the position to the Press has some adverse effect on their credibility, I do not, in the circumstances, regard the effect as so serious that I should disregard their evidence in relation to this issue.

423. It is against that background that I have to consider Mr. Rabinowitz's submission that Mr. Abramovich's comments in the transcript suggest or support the proposition that 44% of the Sibneft shares, or an interest in 44% of the Sibneft shares, were held, whether in a "management trust", or otherwise, for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili pursuant to the alleged 1995 and 1996 Agreements.

424. I do not read, in the manner suggested by Mr. Rabinowitz ,what, on any basis, are Delphic comments made by Mr. Abramovich at the meeting. Having heard the evidence, I do not accept that Mr. Abramovich's comments as recorded in the transcript (or indeed his commentary), support the analysis that he was referring to a 44% entitlement being held on trust for Mr. Berezovsky and Mr. Patarkatsishvili, despite the fact that they are in some respects untrue or misleading as to the precise trust structures. Thus in my view both Boxes 468 and 541 were referring to Mr. Abramovich's existing arrangements for ownership of Sibneft shares, and Box 541 was explaining the mechanisms by which payments could continue to be made to Mr. Berezovsky and Mr. Patarkatsishvili. Nor does Mr. Rabinowitz's criticism of the evidence given by Mr. Abramovich in his commentary at Box 470 take the matter any further. Whilst the statement was not true, I do not accept that it was being made "to obscure the true position" that he was explaining to the other two men that "their 44% of Sibneft -the half of his holding in which he held for them under the 1995 Agreement and the 1996 Agreement-was held in trust." There is no warrant for such a conclusion; Mr. Abramovich said that at the time he did not recall the details about the trust arrangements, even if he had once known them, and in any event he was perpetuating the myth about the "management trust".

Conclusion on the Le Bourget transcript

425. I do not find that a close analysis of the Le Bourget transcript supports Mr. Berezovsky's case as to the alleged 1995 and 1996 Agreements relating to Sibneft. Even if I were to be wrong in this conclusion, such passages as Mr. Rabinowitz suggests do support Mr. Berezovsky's case are so equivocal when placed in the full evidential context, that on any basis they would carry little weight in my final assessment of where the probabilities lie.

xi) The belief of Mr. Berezovsky and others as to his entitlement to an interest in Sibneft; Mr. Berezovsky's asserted belief; his public statements and private statements about his connection with Sibneft; materials showing the belief of Mr. Patarkatsishvili and others in relation to Mr. Berezovsky's and Mr. Patarkatsishvili's entitlement to an interest in Sibneft

Introduction

426. In addition to relying upon the Le Bourget transcript, Mr. Berezovsky contended that his case was supported, and Mr. Abramovich's shown to be untrue, by what Mr. Rabinowitz referred to as a substantial body of contemporaneous and near contemporaneous oral and documentary evidence showing that it was the belief of Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and a significant number of their friends, employees and associates that Mr. Berezovsky and Mr. Patarkatsishvili did indeed have a shareholding interest in Sibneft, and not merely an entitlement to indeterminate payments[216]. Mr. Rabinowitz pointed to various contemporaneous statements in the press and in books to the effect that Mr. Berezovsky was a substantial shareholder in Sibneft; he submitted that Mr. Berezovsky's case on the alleged 1995 and 1996 agreements was also supported and corroborated in particular by statements made in the following documents: the Curtis notes; the proofs of

[216] See, for example, paragraph 385 and 386 of Mr. Berezovsky's written closing submissions; Day 41, pages 63 *et seq* of his written closing submissions; and section D of his opening submissions.

Mr. Patarkatsishvili; evidence from other proceedings; the French Documents; the instructions to Valmet; evidence from the Sheikh; affidavits of Mr. Fomichev and Mr. Kay. He also referred to evidence given by various friends or associates of Mr. Berezovsky. I address the submissions in relation to these materials below.

427. Mr. Rabinowitz submitted that Mr. Berezovsky and Mr. Patarkatsishvili's belief that they did have an interest in Sibneft was also a powerful indicator:

i) that they did have such an interest; and

ii) that the alleged 1995 Agreement was made on the terms that Mr. Berezovsky claims.

In this context, he referred to a passage in the speech of Lord Hoffmann, in *Carmichael v National Power plc* [1999] 1 WLR 2042 at 2050-2051:

> "… In a case in which the terms of the contract are based upon conduct and conversations as well as letters, most people would find it very hard to understand why the tribunal should have to disregard the fact that Mr. Lovatt and Mrs. Carmichael both agreed that the C.E.G.B. were under no obligation to provide work and the respondents under no obligation to perform it. It is, I think, pedantic to describe such evidence as mere subjective belief. In the case of a contract which is based partly upon oral exchanges and conduct, a party may have a clear understanding of what was agreed without necessarily being able to remember the precise conversation or action which gave rise to that belief. As the Court of Appeal pointed out, the tribunal did not make any specific findings about what was said at the interviews or on any other occasion. But the terms of the engagement must have been discussed and these conversations must have played a part in forming the views of the parties about what their respective obligations were.
>
> The evidence of a party as to what terms he understood to have been agreed is some evidence tending to show that those terms, in an objective sense, were agreed. Of course the tribunal may reject such evidence and conclude that the party misunderstood the effect of what was being said and done. But when both parties are agreed about what they understood their mutual obligations (or lack of them) to be, it is a strong thing to exclude their evidence from consideration. Evidence of subsequent conduct, which would be inadmissible to construe a purely written contract (see *Whitworth Street Estates (Manchester) Ltd. v. James Miller and Partners Ltd*. [1970] A.C. 583) may be relevant on similar grounds, namely that it shows what the parties thought they had agreed. It may of course also be admissible for the same purposes as it would be if the contract had been in writing, namely to support an argument that the terms have been varied or enlarged or to found an estoppel." [Emphasis supplied]

428. Relying on this, Mr. Rabinowitz submitted that:

i) such an approach would necessarily apply, *a fortiori*, in a situation such as this, in which the contract was made entirely orally, and more than 15 years ago, so that, entirely predictably, the memories of the parties to that contract about the exchanges by which it was made have faded;

ii) the fact that both Mr. Berezovsky and Mr. Patarkatsishvili, two of the three parties to the alleged 1995 Agreement appear to have concluded that they were Mr. Abramovich's partners under that agreement, and that the agreement gave them a 50% interest in Sibneft and an entitlement to participate in 50% of the profits it generated, and conducted themselves on that basis, was a reflection of the true position; and

iii) it was common ground that the agreement which the parties made was to be objectively determined from their external conduct[217]. If Mr. Abramovich conducted himself in such a manner as to allow Mr. Berezovsky and Mr. Patarkatsishvili genuinely to believe that they were entitled to a share in Sibneft, then the objective conduct of the parties would strongly suggest that the agreement which the parties made was to this, and not to some other, effect. Thus, the Le Bourget transcript showed that Mr. Abramovich himself considered that Mr. Berezovsky and Mr. Patarkatsishvili had an interest in Sibneft.

429. Mr. Sumption, on the other hand, submitted that the available materials provided support for Mr. Abramovich's case.

Mr. Berezovsky's and Mr. Patarkatsishvili's belief and the alleged "concession" by Mr. Abramovich as to such belief

430. Mr. Rabinowitz also sought to rely[218] upon what he referred to as a "concession" made in Mr. Abramovich's written closing submissions[219] that both Mr. Berezovsky and Mr. Patarkatsishvili "may have genuinely believed that they had an interest in Sibneft". He submitted that once it was conceded that Mr. Berezovsky had an "honest recollection" of having an interest in Sibneft, that recollection was evidence which strongly supported Mr. Berezovsky's case.

431. However that in my judgment is not a correct reading of the relevant paragraphs in Mr. Abramovich's written closing submissions - namely both paragraphs 61 and 62. I quote them below (without footnotes), to demonstrate what the point was that was there being made:

> "60. It is fair to say about the Le Bourget transcript that parts of it suggest a sense of entitlement on the part of Mr. Berezovsky and Mr. Patarkatsishvili, which is also apparent from some of Mr. Berezovsky's public and private statements. These statements raise the question whether Mr. Berezovsky really believed that he had an

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217 See Mr. Abramovich's written closing, paragraph 117.

218 See paragraphs 221 and 390-396 of Mr. Berezovsky's written closing submissions.

219 As made in paragraph 61 of Mr. Abramovich's written closing submissions.

interest in Sibneft, and whether he could have believed that if it was not true.

61. It is possible that Mr. Berezovsky may have persuaded himself that in some sense Sibneft was 'his' company. If so, the reasons became increasingly clear as he disclosed his mindset in the course of his evidence. There seem to have been two related factors at work in his mind:

(1) By persuading President Yeltsin (through members of his circle) first to create Sibneft, and then to privatise part of the state's holding in it and to include the rest in the loans-for-shares scheme, Mr. Berezovsky had made it possible for Mr. Abramovich to acquire management control in 1996 and almost all of the shares in the course of 1996 and 1997. It is plain that Mr. Berezovsky appears really to have believed that this was all that really mattered and that all that Mr. Abramovich later achieved was due to him. In keeping with his whole approach to this transaction, Mr. Berezovsky regarded Mr. Abramovich as a subordinate, a functionary, whom he had installed as 'his' manager, generously incentivising him by allowing him to take a proportion of the profits far in excess of the real value of his contribution to the outcome. It is clear that he had no knowledge or understanding of Mr. Abramovich's achievement in integrating the two Siberian businesses into one organisation and transforming old-style Soviet state enterprises carrying a billion dollars of accumulated historic debt into a modern and highly profitable capitalist organisation. Mr. Berezovsky's evidence is that he regarded this as straightforward, and that one had only to acquire control for the money to come pouring in. This presumably explains why he regarded shares which he had not bought or paid for as 'his', and payments for krysha which were plainly unrelated to Sibneft's profits, as nothing less than his due if Mr. Abramovich could afford to make them.

(2) Mr. Berezovsky's apparent belief that he was part owner of Sibneft appears to have been reflected in his attitude to NFK, the vehicle

company which was the successful bidder in the loans-for-shares auction. NFK acquired a pledge of the state's 51% retained shareholding and effective management control over Sibneft, but it never owned any Sibneft shares. Mr. Berezovsky controlled (but did not own) Consolidated Bank, which in turn owned half of NFK: … Mr. Berezovsky may have believed that in some way this made him a part-owner of Sibneft. This belief was mistaken, and in cross-examination Mr. Berezovsky denied that he held it. But the evidence demonstrates that he may well have done:

(a) As recently as June 2011, Mr. Berezovsky told the French investigating magistrate that he could demonstrate his 50% share in Sibneft because 'I represented my interest with B[adri] P[atarkatsishvili] by so-called Consolidated Bank. It is clear evidence that I was formally shareholder of Sibneft.'

(b) In his fourth witness statement, Mr. Berezovsky described his interest in Sibneft as arising from a 'transfer' of NFK's rights in respect of Sibneft to FNK, the company that acquired the state's 51% retained holding when it was sold in May 1997 on the state's default on the loan. In fact there was no such transfer. But Mr. Berezovsky continued to assert that there was. His evidence in cross-examination was that he regarded his control over Consolidated Bank's 50% stake in NFK as giving him and Mr. Patarkatsishvili a 50% holding in FNK. According to him, this was because by some mechanism which he was unable to explain, the 50% interest of Consolidated Bank in NFK had been transmuted into an interest of himself and Mr. Patarkatsishvili in FNK.

(c) Mr. Berezovsky's persistent inability to distinguish between Consolidated

Bank's interest in NFK and his and Mr. Patarkatsishvili's personal interest in Sibneft is reflected in his rather muddled answer … in a newspaper interview in 2000. Asked what percentage he held of Sibneft stock, Mr. Berezovsky replied that he had once held about 7% through 'some LogoVAZ structures.' In fact, 7% was approximately the proportion that he had held in NFK at the time of the loans-for-shares auction.

(d) In the same vein Mr. Jenni said that he understood that 'NFK was the vehicle by which Sibneft - participation to Sibneft was held.' Mr. Jenni managed Mr. Berezovsky's affairs in Switzerland, but was not involved in the creation or acquisition of Sibneft. His information must have come directly or indirectly from Mr. Berezovsky or Mr. Patarkatsishvili.

(e) All of this is consistent with Mr. Berezovsky's complete indifference at the time to the successive sales in which the state sold the privatised 49% of Sibneft and the pledged 51% in the course of 1996 and 1997. What it suggests is that Mr. Berezovsky felt that he was entitled to half of what Mr. Abramovich had, because he had enabled him to acquire practical control of Sibneft and its cash-flows, but not because he himself owned anything. This would be characteristic of a relationship founded on krysha.

(3) Mr. Patarkatsishvili seems likely to have shared Mr. Berezovsky's views on these matters. The interview notes and draft proofs of Mr. Berezovsky's solicitors certainly show that he also regarded himself, at any rate by 2005, as having an interest in Sibneft jointly with Mr. Berezovsky. They also tend to suggest, although the point was never

explored with him, (i) that he believed that this arose from the fact that Mr. Berezovsky was solely responsible for the acquisition of Sibneft ('It is important to remember that BB made it happen. He was the one who persuaded Boris Yeltsin to transfer the various enterprises to Sibneft'); and (ii) that he thought that this had been achieved by way of his original participation in the loans-for-shares auction.

62. There is a world of difference between (i) a feeling on the part of Mr. Berezovsky and Mr. Patarkatsishvili that Mr. Abramovich only owned Sibneft because of them, and (ii) a legal right to treat Mr. Abramovich as owning Sibneft in a representative capacity. The distance between an inchoate sense of entitlement and a legal right is immense. Of course, the difference hardly mattered while Mr. Berezovsky remained a power to be reckoned with in Russia. It only mattered once (i) Mr. Berezovsky started trying to move his assets out of Russia and found himself having to satisfy Western money-laundering regulations, and (ii) he very shortly afterwards lost his political influence and his ability to provide *krysha*. Suddenly, the ownership of assets became important to him in a way that it had never been in the prime of his power. Mr. Patarkatsishvili said nothing about the auctions at which the shares in Sibneft were actually acquired."

432. But, as was pointed out in Mr. Sumption's closing submissions[220], and in Mr. Abramovich's Errata Schedule[221], and as I find, the acceptance on Mr. Abramovich's part was not a concession as to "… the honesty of Mr. Berezovsky's recollection …" as to the alleged 1995 and 1996 Agreements as to whether he and Mr. Patarkatsishvili had any interest in Sibneft under such agreements. Rather, the point being made in Mr. Abramovich's written closing submissions was that it was accepted that they believed they had some sort of entitlement as a result of their efforts to help create Sibneft and the involvement of NFK in the loans-for-shares auction. But that was <u>not</u> a concession on Mr. Abramovich's part that Mr. Berezovsky and Mr. Patarkatsishvili honestly believed that their relationship was one of contractual partnership, rather than *krysha*. On the contrary, the point being made was that it was precisely <u>because</u> of the *krysha* relationship that Mr. Berezovsky might have persuaded himself that he had an inchoate entitlement to Sibneft, as distinct from any legal right.

433. I agree with the analysis made in paragraphs 61 and 62 of Mr. Abramovich's written closing submissions, as amplified in Mr. Sumption's oral submissions, save possibly in one respect. I do not consider that Mr. Berezovsky genuinely believed that,

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220 Day 39, pages 76-83.

221 Page 37, reference to paragraph 221.

because of his indirect control of a 50% shareholding in NFK, he was in some way entitled to be an owner of 50% of the share capital of Sibneft. I do not think that Mr. Berezovsky held any such belief. In Mr. Berezovsky's second Particulars of Claim, it was originally pleaded that the "ownership interest" in Sibneft was "acquired" by NFK[222]. It was further pleaded that "[i]nitially" before 1996 Mr. Berezovsky and Mr. Patarkatsishvili "… legally owned or controlled companies which controlled and legally owned their proportions of Sibneft shares"[223]. That allegation was subsequently deleted by amendment. In cross-examination Mr. Berezovsky denied that he held such a belief[224]. My conclusion on the evidence in relation to this point is:

i) that Mr. Berezovsky's indirect control of a 50% shareholding in NFK and its participation in the loans for shares auction fed, or contributed to, his sense of entitlement to some sort of interest in Sibneft;

ii) that, as demonstrated by the evidence referred to at paragraphs 61(2) (a), (b) and (d) of Mr. Abramovich's written closing submissions, Mr. Berezovsky used his indirect control of a 50% shareholding in NFK on occasions to support his assertion that he was, or had a contractual entitlement to become, a shareholder in Sibneft;

iii) but that he never genuinely believed that his indirect interest in NFK of itself gave him a shareholding interest in Sibneft or a contractual entitlement to one.

434. In a fact-heavy case, it is vital to be able to discern the pattern in the carpet. The pattern in this case (as was manifestly clear from Mr. Berezovsky's own evidence) was that Mr. Berezovsky regarded Mr. Abramovich's successes in relation to Sibneft as achieved directly as a result of Mr. Berezovsky's (and Mr. Patarkatsishvili's) own political and other efforts in ensuring the privatisation of Sibneft. Mr. Berezovsky also regarded Mr. Abramovich as a subordinate, whom he had made, put in place and, as Mr. Sumption put it, "owned". I have no doubt that Mr. Berezovsky, and probably also Mr. Patarkatsishvili, considered that, as a result, they were entitled to a substantial piece of the Sibneft action[225], and on a continuing basis. But in my judgment that "inchoate sense of entitlement" was entirely different from a genuine belief in an actual legal entitlement under a contractual, albeit oral, agreement; it was also entirely different from an honest recollection of what occurred at the date of the alleged 1995 and 1996 Agreements. But, as was submitted on behalf of Mr. Abramovich, an "inchoate sense of entitlement" was entirely consistent with an arrangement between the three men based on protection or *krysha*.

Public statements made by Mr. Berezovsky and others prior to 27 June 2001

435. I turn now to consider some of the documentary materials upon which Mr. Berezovsky and Mr. Abramovich respectively relied in this context.

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222 See paragraph 35.
223 See paragraph 36.
224 Berezovsky Day 5, page 67.
225 Including profits generated by Mr. Abramovich's trading companies from their dealings with Sibneft.

Mr. Berezovsky's formal position in relation to Sibneft

436. The formal position, so far as directorships were concerned, was that Mr. Berezovsky had been elected to Sibneft's Board of Directors on 26 September 1996. He resigned in December 1996, having become the Deputy Secretary of the Russian Security Council on 29 October 1996 (a body of which he remained a member until November 1997). Mr. Abramovich's evidence was that he supported Mr. Berezovsky's appointment as a director of Sibneft, because it continued the public association between Mr. Berezovsky and Sibneft, which was valuable to Mr. Abramovich. Mr. Berezovsky on the other hand, suggested that Mr. Abramovich had said that such appointment would give the impression that Mr. Berezovsky had no shareholding interest in Sibneft. I consider this to have been an unlikely reason. Mr. Abramovich was appointed to the Board of Directors of Sibneft in September 1996, and remained a director until December 1999. Mr. Shvidler became the CFO and Vice President of Sibneft in 1996. In June 1997, Mr. Patarkatsishvili joined the Sibneft board. He remained a director until mid 1999.

Media reporting prior to 27 June 2001

437. Mr. Berezovsky never publicly claimed to have had any substantial interest in Sibneft until June 2001. From an early stage, however, it was widely assumed in the media that Mr. Berezovsky was a substantial shareholder in Sibneft. There were regular statements in the press and in books to that effect, which are now relied upon by Mr. Berezovsky as evidence supporting his case. However, whilst he was still living in Russia, when questions were asked of him in press interviews on the assumed basis that he was a shareholder, he neither confirmed nor denied the assumption, but simply did not engage with it. Mr. Abramovich's evidence was that, at the time, he had no problem whatsoever with the public assumption that Mr. Berezovsky was a shareholder, because, within Russia, Mr. Abramovich was anxious that he should indeed be publicly associated with a protector as influential as Mr. Berezovsky. As Mr. Abramovich said in his oral evidence :

> "Now, so far as Berezovsky is concerned and the mention of Berezovsky, the market has always believed that Sibneft belongs to Mr. Berezovsky and we have never tried to fight against those rumours inside Russia. The concept of *krysha* presupposed that it looked like the whole thing belonged to Berezovsky one way or another, in different shapes or forms That was the whole point of this arrangement. He was the ice-breaker who removed all problems, resolved all problems, and that's what he was being paid for."

438. However, I was referred to a number of Press and other public statements where the journalist speculated that Mr. Berezovsky was a shareholder in Sibneft. In my judgment, they cannot be regarded as evidentially reliable for the purposes of this trial. As the evidence showed, holdings in Russian companies were frequently opaque, as a result of the interposition of complex networks of holding companies whose ownership was unclear other than to the ultimate beneficial owners and their lawyers. There was nothing to suggest that the press statements were anything more than speculation and gossip by journalists and others with no means of actual knowledge.

439. Importantly, as and when formal statements were required as to whether he had an interest in Sibneft, Mr. Berezovsky himself expressly denied to the media that he had such an interest. For example:

i) In the newspaper *The Kommersant Vlast* dated 26 December 1995 he was reported as suggesting that he had failed to acquire an interest in the oil industry although the paper commented that "… rumours persist[ed] in the oil business community that Sibneft is a project of Berezovsky".

ii) When FNK acquired 51% of Sibneft at the auction in 1997, when the State had defaulted on the loan, Mr. Berezovsky immediately made a public statement to Reuters that he had "no ties to FNK".

iii) At the same time, in *FSO Energy News*, he was reported as referring to his position as a State official which barred him from business activity and denied that he had any connection with FNK.

The Eurobond Offering Circular issued on 14 August 1997

440. However, the most significant piece of evidence in this context was not press reportage, but a statement included in an offering circular ("the Offering Circular") issued by Salomon Brothers AG on 14 August 1997. The circular related to a proposed Eurobond issue of $150 million Floating Loan Participation Certificates and Loan Sub-Participations for the purpose of financing a loan to Sibneft. The Eurobond issue was traded on the New York Stock Exchange and was marketed in the West. It therefore had to satisfy standards of due diligence prevailing in Western capital markets. The Offering Circular set out a list of the registered shareholdings in Sibneft, immediately followed by the following statement[226]:

> "FNK, SINS, Refine Oil and RUNICOM Ltd are all privately held companies and have close connections with the current management of Sibneft. As such, more than 97% of the Company [Sibneft] is currently controlled by the Company's managers and a small group of private Russian investors. An influential Russian figure, Boris Berezovsky, who is currently the Deputy Secretary of the Security Council of the Russian Federation, served on Sibneft's Board of Directors until October 1996 and was chairman of NFK when it won the right to manage 51% of Sibneft's shares in the loan-for-shares programme. Mr. Berezovsky does not own or control, or have any other interest in, any shares in Sibneft, directly or indirectly. He does, however, maintain a close relationship with certain members of the senior management and the Board of Directors of the Company." [Emphasis supplied.]

441. The evidence demonstrated that the American lawyers, Cleary, Gottlieb, Steen & Hamilton, as well as Salomon Brothers, had performed due diligence on matters such as share ownership prior to the issue of the Offering Circular[227]. Moreover, at the

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226 See page 16 of the Circular.

227 Tenenbaum 3rd witness statement, paragraph 9.

time the statement was made, Mr. Patarkatsishvili and Mr. Smolensky (of SBS) were both directors of Sibneft[228], and were accordingly among those who assumed responsibility for the Offering Circular.

442. The evidence about the extent to which Mr. Berezovsky was consulted about this statement was disputed. I summarise it as follows:

i) In his oral evidence Mr. Berezovsky acknowledged that he was aware of the proposed Eurobond issue but denied that he was consulted about the terms of the statement. He claimed that he had not seen the Offering Circular until 1998, when he first saw it in the context of libel proceedings which he brought against *Forbes* magazine[229]. He said that the statement in the Offering Circular about his not owning, or controlling, or having any other interest in, any shares in Sibneft, directly or indirectly was "absolutely [a] lie".

ii) He was cross-examined about the following paragraphs in Dr. Nosova's witness statement to the effect that she had been told by Mr. Berezovsky that Mr. Abramovich had consulted with him and Mr. Patarkatsishvili about the circular "… before it was published":

> "195 In the middle of 1997 Sibneft published an offering circular to raise money on the international markets by selling $150 million of Floating Rate Loan Participation Certificates. I was not involved in the preparation of this Offering Circular, but Boris told me that Mr. Abramovich consulted with Boris and Badri about it before it was published.
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> 196 In the preparation of this Offering Circular, I was aware of the fact that Mr. Abramovich had agreed with Boris that there should be a statement in the document confirming the agreed public position which they were adopting: i.e. that Boris did not have an interest in the company. This reflected the aims of the 1996 Agreement, to distance Boris from the company. I believe it was probably also thought that including a statement like this would reduce the concerns of investors about political risk from Boris's involvement. In the period before this Offering Circular was issued, it was very widely reported and well-known that Boris had an interest in Sibneft.
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> 197 I was not particularly concerned about the inclusion of this statement in the Offering Circular. I believed that, as a result of the 1996 Agreement, the statement was technically correct since Sibneft was held by Mr. Abramovich. As I have explained, I was very against the whole notion that Boris and Badri's interest

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228 See page 43 of the Circular.

229 Berezovsky Day 4, pages 82-83.

in Sibneft should be held by Mr. Abramovich. The whole idea was one which I thought was dangerous. However, once that arrangement was in place, I did not think that one particular statement like this one was any more of a problem. It was agreed between Boris, Badri and Mr. Abramovich that Boris and Badri would keep their interest in Sibneft secret, and this was just one example of them doing that." [emphasis supplied]

Despite the clear terms of Dr. Nosova's statement, Mr. Berezovsky said that she had got it wrong and that Mr. Abramovich had not consulted him about the circular.

iii) He was then cross-examined about a passage in an attendance note prepared by Ms. Michelle Duncan, a solicitor at Cadwalader, his solicitors at the time, of a meeting in Tel Aviv with Mr. Patarkatsishvili and himself in November 2007. Ms. Duncan's attendance note recorded Mr. Berezovsky saying as follows:

"Eurobond Prospectus

RA asked me to do this. He said we [shouldn't] public[ly mention] that [you] are there. If you are ment[ioned could] reduce value of [company]."

iv) Again, Mr. Berezovsky denied that this was what he had said to Ms. Duncan. But, thereafter he seemed to be saying that he had indeed been at least "informed" by Mr. Abramovich about the circular in the following passage of cross-examination:

"Q. Two people have independently said that you were consulted about this document by Roman Abramovich: [Dr]. Nosova has said so and you confirmed that to Ms. Michelle Duncan in 2007.

A. Once more: I did not consult anybody concerning Eurobonds certificate.

MRS JUSTICE GLOSTER: Can I be clear, Mr. Berezovsky: the question that was put to you was that you were consulted about this document by Mr. Abramovich. It's not that --

A. Oh yes. Sorry, sorry, sorry, my Lady. It's my … I was not consulted by Mr. Abramovich, yes? I was informed by Mr. Abramovich that this is the certificate to get credit on the market for Sibneft company. That's it. And he said that, 'We worry about that Sibneft strong connect to you'. I said, 'Roman', I don't remember, 'Roman', I said, I don't remember, 'Roman' -- I said that I completely share their position to obtain the credit and, you know, 'My position, it's

> clear that I am -- I hold -- you hold my shares, but put in the way which you like to put but without damaging me'".

443. Dr. Nosova had been sitting in court when Mr. Berezovsky gave his evidence. When she came to be cross-examined about the relevant passage in her witness statement, she attempted to put a gloss on what she had said in her witness statement in a number of inconsistent and confusing ways. At one stage she appeared to suggest that what she was referring to in her statement as "technically correct", was another draft of the statement, which only related to legal interests in the shares; at another stage she seemed to be suggesting that what had been agreed with Mr. Abramovich and Mr. Shvidler, who were instructing the lawyers and the investment advisers on this circular, was that a statement which only referred to the legal interests in the shares would go into the circular, but this they had failed to do; at a yet further stage, she said that what had been agreed was that they would explain the real position to the lawyers and the investment advisers and get their advice as to whether or not it was possible to include a statement that covered only legal interests in the shares. What was clear however (from its reference number) was that the document which she had referred to in her witness statement was indeed the final version of the statement as it appeared in the circular, which was produced from Mr. Berezovsky's own disclosure. I found Dr. Nosova's evidence on this point unclear and unsatisfactory.

444. In his principal (third) witness statement, Mr. Abramovich referred to the statement in the Offering Circular as follows:

> "Although some of my colleagues had reservations about Mr. Berezovsky, at this early stage I considered my association with him to be an asset. For example, the offering circular for Sibneft's $150 million Floating Rate Loan Participation Certificates in August 1997 stated that although Mr. Berezovsky did not have an ownership interest in Sibneft, 'He does, however, maintain a close relationship with certain members of the senior management and the Board of Directors of the Company.' This reflected my desire to keep my association with Mr. Berezovsky public at that time."

In his fourth witness statement, Mr. Abramovich said:

> "54. Contrary to what Ms. Nosova suggests (Nosova 2, paragraph 195-96), I did not discuss with Messrs Berezovsky and Patarkatsishvili the prospectus for the issue of Eurobonds prior to its publication. I also did not clear with Mr. Berezovsky the statement in that document confirming that Mr. Berezovsky did not have any interest in the company. This statement was not a deliberate act to distance Mr. Berezovsky from Sibneft. It was rather a true statement designed to clarify any false perception in the minds of potential investors that Mr. Berezovsky had any ownership or control over Sibneft. The statement was unrelated to any alleged 1996 Agreement. It may be that

> Mr. Berezovsky read the relevant part of the prospectus and agreed with its contents but, if so, he and I did not discuss it. I would have had no reason to discuss with him a statement which we both knew was true - Mr. Berezovsky was not a Sibneft shareholder and he did not exercise any control over Sibneft. I do not know if anyone in the Salomon team responsible for the drafting of the prospectus discussed it with Mr. Berezovsky."

445. Mr. Abramovich was not cross-examined about whether any discussion had, or had not, taken place with Mr. Berezovsky about the wording in the circular. In the wholly different context of cross-examination about his education he said that, although he did not remember, it was most likely that he had indeed read the Offering Circular, before it went out, although he had had difficulties with it, as it had been in English. Mr. Rabinowitz submitted that this meant "he could not, therefore, have discussed the precise wording with Mr. Berezovsky (and did not claim that he had done so)." If indeed it was Mr. Berezovsky's case that (irrespective of any specific discussion about the precise wording of the statement), he and Mr. Abramovich had agreed that a misleading statement was to go in the Offering Circular concealing the true facts about Mr. Berezovsky's direct or indirect interests in, or entitlement to, Sibneft shares, because of Mr. Abramovich's, or potential investors', concerns about public association with Mr. Berezovsky, Mr. Abramovich should have been cross-examined directly on the point.

446. In his witness statement in relation to the offering circular Mr. Shvidler said as follows:

> "I would have been very surprised if there were any discussions about Mr. Berezovsky owning interests in Sibneft around the time of the auction in 1997 because I was involved with the making of public statements at that time which said the opposite. … Apart from the fact that Salomon Brothers and the lawyers, Cleary Gottlieb, had to satisfy themselves of this issue, Mr. Patarkatsishvili was a director of Sibneft at that time, as was Mr. Smolensky. It is difficult to see how either of them could have allowed that statement to go out if they also had not believed it to be true. I also do not believe that Mr. Abramovich would have allowed that statement to be included if he knew it was not true. There had been press comment to the contrary by that stage and this was an important statement in the context of the offering."

447. The reason why it was necessary to make a statement about Mr. Berezovsky in the Offering Circular was described by Mr. Tenenbaum. At the time, he was a director of Salomon Brothers, in London, and was part of the team working on the bid, although he himself was not directly involved in the due diligence exercise into share ownership. Subsequently he joined Sibneft in 1998 and thereafter became a close business associate and colleague of Mr. Abramovich. In his written evidence he gave the following explanation as to why Salomon Brothers and Cleary Gottlieb perceived

it necessary for there to have been a specific statement about Mr. Berezovsky's position:

> "10. The reason why this particular statement was contained in the Offering Circular was, as I recall, because Mr. Berezovsky's association with Sibneft was one of the issues raised by investors. In particular, I recall being made aware of the reluctance of many in the market to be associated with any company which Mr. Berezovsky owned or part owned. I understood that the negative reaction of some investors to any sign of Mr. Berezovsky's ownership was due to his well-known association with criminal elements and what investors described to me as his 'Godfather' like figure (with all the mafia related connotations of that term, including treating people and businesses as personal property). Indeed, by that time, there had been consistent media reports concerning Mr. Berezovsky's alleged ordering of contract killings of various well-known Russian politicians and journalists. The most well-known of these was the 1996 Forbes article accusing Mr. Berezovsky of masterminding the March 1995 murder of Vladislav Listiev, a Russian journalist who at the time served as the General Director of OAO Obshestvennoye Rossiyskoe Televidenie ("ORT"). Investors are inherently conservative and, in my experience, generally react negatively if a company is too strongly associated with figures who have anything other than a business focus. In the case of Mr. Berezovsky, there was not only his reported connections with organised crime and the Chechen rebels, but also his strong political agenda, all of which gave rise to the perceived risk that he was not interested in the long term strategic vision of Sibneft. Rather, he was seen as someone who might potentially loot any company with which he was associated to satisfy his own personal agenda, as was suggested by the same 1996 Forbes article. Unsurprisingly, investors usually prefer business people who are clearly focused on introducing cost efficiencies and building a serious and profitable company. In fact, this is exactly why Mr. Abramovich's ultimate ownership of the company was by 1999 generally perceived as an attractive factor by the investment community, as by that time Mr. Abramovich had already become known as a strategically minded and principled businessman, which tremendously enhanced investors' confidence in the company.

11. Given the concerns of some investors, therefore, it was necessary for the Offering Circular to make a specific disclosure reference to Mr. Berezovsky and make it clear that, although he did maintain a relationship with Sibneft's owners and managers (as had been already reported in the media), that relationship was not based on any actual ownership in the company. This was done to assure investors that Mr. Berezovsky had no right to influence the company's affairs. On the other hand, the realities of Russian oil business at the time necessitated an association with people like Mr. Berezovsky because of the need for a strong 'krysha' ('krysha', meaning literally 'roof' in Russian, in this context means political support and physical protection). Investors would have been aware that the fortunes of an oil company are entirely reliant on its ability to replenish its reserves, which is achieved both through obtaining new licenses from the government (usually at auction) and by buying existing oil concerns (which, at the time, were almost all government owned). Political support is therefore essential to an oil company and, at that time, Mr. Berezovsky was a prominent political figure. The oil business had also been (and still was at that time) plagued by violence and organised crime connections. The fact that there was someone like Mr. Berezovsky associated with the owners also gave at least some investors a positive signal that to some extent, and at least temporarily, the company had some protection against a certain kind of interference. At Salomon Brothers, we had dealt with the Russian oil business on prior occasions and, as such, were well versed in these realities."

448. On the basis of this and other relevant evidence, I conclude that, despite his denial, the probability is that Mr. Berezovsky and Dr. Nosova, or at least someone in Mr. Berezovsky's team, probably did see the statement in the Offering Circular before it was published, but did not discuss its wording with Mr. Abramovich. Although there was no direct evidence on the point, the strong inference must be that someone from the due diligence team at Salomon Brothers and Cleary Gottlieb, or from Sibneft's own English lawyers, Frere Cholmeley Bischoff, would have confirmed the statement with him, with Mr. Patarkatsishvili, and/or with someone in Mr. Berezovsky's office, before its inclusion. This was clearly a material statement in the context of this offering, for which the company and its directors would have taken responsibility, and one in respect of which a high degree of due diligence was, in the circumstances, necessary, given the structure of the registered shareholdings and the adverse, and in certain cases, defamatory, press reports about Mr. Berezovsky, such as the 1996 *Forbes* article which were in the public domain at the time.

449. If Mr. Berezovsky did not see the statement in the Circular, or a draft, at the time, then it is difficult to see how his statement to Ms. Duncan and the evidence of Dr. Nosova could have been anything other than wholly fabricated. But on either basis, I do not accept Mr. Berezovsky's evidence that he and Mr. Abramovich agreed that a false statement should be included in the Offering Circular to conceal the true nature of his interest in Sibneft, whether because of investors' concerns or for some other reason. I find that he and Dr. Nosova appreciated that the statement in the Offering Circular (whether or not he saw it) presented real difficulties in the way of his case and that it was accordingly necessary for a story to be concocted that laid the blame for the inclusion of such statement in the Offering Circular on Mr. Abramovich.

Forbes litigation

450. In 1998, Mr. Berezovsky brought a libel action in the English High Court, Queen's Bench Division, 1997 B No. 240, against Forbes Inc in respect of the 1996 *Forbes* magazine article referred to above. The defendants made an application to strike out the claim on the grounds that Mr. Berezovsky had no sufficient reputation in England to protect. In opposition to the application, Mr. Berezovsky relied upon an affidavit from Mr. Shvidler dated 11 September 1998, which he had asked Mr. Shvidler to supply. The affidavit was drafted by solicitors at Carter Ruck, the firm acting for Mr. Berezovsky's in the libel action. The affidavit expressly referred to the 1997 Offering Circular and exhibited it. Mr. Shvidler said as follows:

> "1. I am Vice President of Sibneft, which is one of the largest oil companies in Russia; in 1996 the company produced approximately 6.2% of the Russian crude oil, and refined approximately 9.1% of the total Russian throughput; the company's total sales in 1996 were $3.1 billion. Boris Berezovsky was involved in establishing Sibneft when it first came into partly private ownership in 1996; the company is now entirely privately owned. Mr. Berezovsky served on Sibneft's Board of Directors until October 1996; whilst he no longer has any role in the management of the company nor any shareholding, he tends still to be publicly identified with the company.
>
> 2. As a senior executive officer of Sibneft, I have been personally involved in the company's efforts to raise capital for its business; I have had frequent dealings with people in London, because of the City's importance as a major financial centre. Because of the association of his name with Sibneft, I have often been asked to explain Mr. Berezovsky's connections with the company; in my experience, financial analysts at reputable broking firms, banks and financial institutions in London, conducting due diligence on behalf of potential investors will make enquiries concerning Mr. Berezovsky as part of the process. It is

apparent to me that Mr. Berezovsky's name is well known within the City of London.

3. During the course of my dealings with London based financial institutions, the article written about Boris Berezovsky by Forbes magazine, entitled 'Godfather of the Kremlin' has frequently been mentioned to me. It is stated in the article, wrongly, that Mr. Berezovsky 'has acquired at least 80% of Sibneft, one of Russia's largest oil companies;' anyone therefore who checks will automatically be able to access the article on the Internet. Not surprisingly, I have received a great deal of negative feedback from investors, including those in the UK, who have expressed concern about Mr. Berezovsky's role in the company and, in the light of the Forbes article, how that may affect their shareholding. This leaves me in no doubt about the detrimental effect of the Forbes article upon Mr. Berezovsky's reputation and upon the reputation of companies with which his name is associated amongst the financial community in London.

4. By way of example, individuals at Salomon Brothers expressed directly to me their concern about the allegations made against Mr. Berezovsky. This occurred during the summer of 1997, when Sibneft became the first Russian company to place a corporate Eurobond on the market, to the value of $150m. Seventy percent of that bond was eventually placed in London. A copy of the prospectus is now produced and shown to me marked "ES1"

451. In his oral evidence, Mr. Berezovsky claimed that he had been extremely cross when he read Mr. Shvidler's affidavit, not only because he saw the Offering Circular for the first time, and what had been said in that document, but also because he had wanted Mr. Shvidler to describe in the affidavit "… in terms which coincide with reality", the nature of his interest in Sibneft, whereas Mr. Shvidler had effectively put it more strongly than that. He claimed that Mr. Shvidler had:

> "… accept[ed] this position but on the other hand he present me Eurobonds certificate where it was written that I never had - in very strong terms, that I never had any connection, which definitely could be helpful for me for Forbes case but was not true at all[230]."

Subsequently he said:

> "For me it was the best if this certificate in this way was presented to *Forbes* magazine. It stressed that I don't have any

[230] Berezovsky Day 4, page 82.

> connection to Sibneft at all and it's very -- it could be very useful for me. But I insist when I have seen this certificate that Mr. Shvidler put in his witness statement the reality and not dream, yes?"[231]

He then sought to suggest that Mr. Shvidler's statement in his affidavit was technically true on the grounds that it was not inconsistent with his case in this action because his alleged shareholding was unregistered[232].

452. In Mr. Abramovich's written closing submissions, it was submitted that the statements made by Mr. Shvidler in his *Forbes* affidavit were, as Mr. Berezovsky must have appreciated at the time, wholly misleading if what he said about the terms of the alleged 1995 and 1996 Agreements were true. Mr. Rabinowitz on the other hand submitted that such criticism was unjustified because:

i) As a preliminary point, the *Forbes* affidavit of Mr. Shvidler contradicted Mr. Abramovich's case in this action, and Mr. Shvidler's evidence, which was to deny that Mr. Berezovsky ever had a shareholding in Sibneft.

ii) Mr. Berezovsky explained in his evidence that he considered the statement made by Mr. Shvidler to be true, because he did not hold any shares in Sibneft, and only had an interest in Sibneft under his agreement with Mr. Abramovich: as he said, "It's written that I [don't] have 'any shareholding'. It's absolutely correct written here[233]."

iii) The criticism was itself very unfair given that the distinction between a "shareholding" - used to mean direct legal ownership of shares in a company - and an interest in the company not comprising direct legal ownership of its shares, which was one drawn and relied on by Mr. Abramovich and his own witnesses (in particular Mr. Tenenbaum), as well as by Mr. Berezovsky.

453. Having heard Mr. Berezovsky's evidence on the matter, I conclude that these statements in Mr. Shvidler's affidavit, taken in their context, would indeed have been highly misleading statements, if Mr. Berezovsky's case about the alleged 1995 and 1996 Agreements had been true. That was particularly so in circumstances where the Offering Circular was also put in evidence in the *Forbes* litigation, albeit with no direct reference to the statement contained in it. If Mr. Berezovsky were really angry, as he suggested, with Mr. Shvidler when he first saw the content of the Offering Circular, and Mr. Shvidler had accepted that criticism, as Mr. Berezovsky also suggested, it is highly unlikely that Mr. Shvidler would have expressed himself in his affidavit in the way that he did, or have exhibited the Offering Circular, without explaining that, although Mr. Berezovsky was not a registered shareholder, and contrary to what was expressly stated in the Offering Circular, Mr. Berezovsky did indeed have an enforceable interest or entitlement to Sibneft shares and to participate in its profits. If Mr. Berezovsky, by his reference to the fact that the statement in the Offering Circular "could be very useful for me" was suggesting that he and Mr. Shvidler had deliberately agreed to deploy the statement in the *Forbes* litigation,

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231 Berezovsky Day 4, page 120.
232 Berezovsky Day 4, pages 84-88.
233 Berezovsky Day 4, page 88.

notwithstanding that it was untrue, that was an allegation of dishonesty that should have been expressly put to Mr. Shvidler in cross-examination and was not.

454. Nor was the suggestion put to Mr. Shvidler that the statement in paragraph 1 of his *Forbes* affidavit ("… whilst he no longer has any role in the management of the company nor any shareholding …") [Emphasis supplied] contradicted Mr. Abramovich's case in this action: that Mr. Berezovsky had never had a shareholding in Sibneft. There was nothing in the other points made by Mr. Rabinowitz but it is not necessary for me to deal with them in detail.

Other statements made by Mr. Berezovsky in press interviews prior to 27 June 2001

455. Other public statements made by Mr. Berezovsky were similarly misleading if indeed he had had a contractual entitlement, together with Mr. Patarkatsishvili, to a 50% interest in such shares, or to have Sibneft shares transferred to him. For example, in an interview in July 1999, when he held no public office, Mr. Berezovsky was reported as saying in an interview with *Vremya MN*:

> "I am not a Sibneft stockholder, and I have said that many times, although I was lobbying [for] the creation of this company and I have strategic interests within this company and in relation to it."

Later in the same year, in an interview with *Kommersant* newspaper, Mr. Berezovsky was directly reported as saying that: "I was participating in setting-up of Sibneft as a lobbyist, not being a shareholder of that company". That answer was in response to a direct question raised by an interviewer about Sibneft's denial that neither Mr. Berezovsky, nor any company of his, was a shareholder in Sibneft.

Once again, I was not convinced by Mr. Berezovsky's explanation that, at the time, he was truthfully drawing a legitimate distinction between legal, registered ownership and his beneficial interest.

Press announcement made by Mr. Berezovsky on 27 June 2001

456. No public claim was made by Mr. Berezovsky to the effect that he was a substantial shareholder in Sibneft until 27 June 2001, when he made an announcement in *Kommersant* (a newspaper owned by him) to the effect that he owned half of Sibneft. According to a report published in *The Moscow Times* the following day, Mr. Berezovsky said that "… his shares in Sibneft were being managed by a team overseen by" Mr. Abramovich and that he, Mr. Berezovsky, did not "keep close tabs on the stake". *The Moscow Times* commented that Mr. Berezovsky's announcement:

> "back[ed] away from earlier contradictory statements that he either owns 7% of the No. 6 oil company or no stake at all"

and caused considerable surprise in the light of the previous repeated denials which had been made by Sibneft that Mr. Berezovsky had any interest in the company.

457. In my judgment, the evidence relating to this issue undermines Mr. Berezovsky's case and supports that of Mr. Abramovich. It also demonstrates Mr. Berezovsky's ability

to use his access to media reportage to further his particular commercial goal at any one time. The timing of this statement was curious, to say the least. On Mr. Berezovsky's own case, in this action, prior to the date of the interview (27 June 2001), he had recently parted with his alleged interest in Sibneft pursuant to an agreement referred to as the Devonia Agreement, which was entered into on 5 June 2001 and said to have become effective on 12 June 2001. I deal with the agreement in greater detail below, but, in summary, it provided, or purported to provide, for the sale by Mr. Berezovsky and Mr. Patarkatsishvili to Devonia Investments Ltd of their beneficial interests in 2,062,335,000 Sibneft shares. In cross-examination Mr. Berezovsky suggested that he made the announcement to encourage Mr. Abramovich to keep up payments of $1.3 billion (which the latter had agreed to make at that time).

458. I reject that explanation. The documentary evidence obtained from the files of Clydesdale Bank and other circumstantial evidence clearly demonstrated that the statement had been made to the press in order to provide material to satisfy the bank's money-laundering enquiries into the provenance of the funds. Mr. Curtis, Mr. Berezovsky's solicitor at the time, had been trying to satisfy the bank of the existence of the interest being sold. Mr. Curtis had written to Mr. Fomichev, Mr. Berezovsky's financial assistant, on 1 June 2001 saying that the bank was likely to require more information, and suggesting that Mr. Fomichev should find some press copy supporting its existence. There was no such copy, as Mr. Berezovsky had not previously claimed in public to have any interest in Sibneft, and the Offering Circular asserted that he did not. The press cutting was sent to Mr. Curtis shortly after it appeared, and was duly supplied by Mr. Curtis to the bank.

459. The conclusion which I reach is that the reason why Mr. Berezovsky made a press statement that he owned a large part of Sibneft, three weeks after he claimed to have disposed of it pursuant to the Devonia Agreement, was that he needed to do so in order to generate press copy to satisfy the bank's money-laundering enquiries. Mr. Berezovsky himself admitted in cross-examination that his press announcement, if not a lie, was at least "disinformation", a comment typical of Mr. Berezovsky's flexible attitude to the truth. It was certainly not a statement that could be relied upon to support his case as to any interest under the alleged 1995 and 1996 Agreements in Sibneft.

Private statements made by Mr. Berezovsky and Mr. Patarkatsishvili

Instructions to Valmet

460. Apart from private conversations with friends, associates and employees (which I deal with below), Mr. Berezovsky and Mr. Patarkatsishvili first began to claim to third party professional advisers that they were major shareholders in Sibneft sometime in 2000, when they were in the process of setting up offshore structures which were to hold their assets. As Mr. Jenni explained, as a result of the Aeroflot case, Mr. Berezovsky and Mr. Patarkatsishvili had experienced problems in 1999 in Switzerland, involving the sequestration of their funds and the blocking of their bank accounts as a result of a request for legal assistance by the Russian prosecutors. Although Mr. Jenni tried to suggest that the principal purpose of the exercise of setting up offshore structures was a wish on the part of Mr. Berezovsky and Mr. Patarkatsishvili to "structure their relationship in a way that it was clear who was

holding what shares in what", there was little doubt that the real driver was to establish a complex structure of trusts and companies, with the assistance of Swiss confidentiality laws, in order to protect their assets from attack from the Russian authorities.

461. To this end, at some date in 2000 Mr. Berezovsky and Mr. Patarkatsishvili were introduced to a Mr. Christopher Samuelson ("Mr. Samuelson") of Valmet Trust Group ("Valmet"), trust and corporate service providers. After an original presentation by Mr. Samuelson, various meetings appear to have taken place in August and September 2000 to explore, on behalf of Mr. Patarkatsishvili and Mr. Berezovsky, the setting up of offshore structures into which they could place their assets. Some meetings with Valmet staff were attended by the two men themselves, and their in-house advisers, such as Mr. Fomichev, Mr. Kay and Dr. Nosova, as well as Mr. Jenni; others were merely attended by the in-house advisers.

462. Mr. Rabinowitz relied upon various documents, compiled by Mr. Berezovsky's and Mr. Patarkatsishvili's advisers as part of this process, that appeared to refer to some kind of interests in Sibneft and RusAl. These included:

i) An undated explanatory memorandum ("the Explanatory Note") which referred to a payment of $100 million commission to Mr. Patarkatsishvili[234];

ii) a list of documents dated 21 April 2000; apparently connected to the Explanatory Note; although this document referred to Mr. Jenni, he denied that he had ever seen it;

iii) a structure chart which indicated four companies labelled as "Sibneft" purchasing certain of the underlying aluminium assets[235];

iv) an inter-office memorandum prepared by Mr. Samuelson of Valmet dated 5 September 2000 ("Mr. Samuelson's Inter-Office Memorandum");

v) an email from Mr. Samuelson to Mr. Maillard attaching structure charts for the Hotspur and Octopus Trusts.

463. Mr. Samuelson's Inter-Office Memorandum gave a flavour of the nature of these documents. He recorded in the document his introduction to Mr. Berezovsky and Mr. Patarkatsishvili, and their plan to use offshore structures. The memorandum included the following passages:

> "Our new clients are Boris Berezovsky and Arkady Patarkatsishvilli [sic]. … Most large Russian businesses needed political clout to be favoured in the State sell off of significant assets. Thus BB and AP were able to buy control of Sibneft, the fourth largest oil company, and subsequently have acquired 70% of Russia's aluminium smelters and have created a new holding company called Russian Aluminium to own all their aluminium holdings. Russia is the 2nd largest producer in the World, thus Russian Aluminium is one of the largest in the

234 I refer to this Explanatory Note further in the context of the RusAl issues.

235 I likewise refer further to this structure in the context of the RusAl issues.

World. These two holdings are the primary generators of their profits and will represent two of the key holdings within the structures that we are creating for them.

The master trusts for BB and his family are Isle of Man trusts (Hotspur). The master trusts for AP and his family are Gibraltar trusts (Octopus). Under each top trust are 24 trusts that each own a subsidiary company (we are using 8 IOM, 8 Gibraltar and 8 BVI for each structure. These companies will own up to 4.9% each in the Mauritian funds. Each Group has seven Mauritian funds called Grosvenor for 'O' and Warwick for 'H'. The funds will own their shares through wholly owned subsidiaries, either Cypriot companies or using the Netherlands /Malaysian combination. We will start by moving the Sibneft holdings in to the funds in about ten days. These holdings are owned through Cypriot companies mainly today. The ratio between 'H' and 'O' in regard to Sibneft are 33:17. The amount of Sibneft that will be held by 'H' and 'O' combined will be 44% of 100%.

BB and AP also own a large stake in Aeroflot and Transaero along with other holdings. …

Other assets that we have to deal with include cars (Rolls Royce Corniche, BMW X5, sundry MBs etc.), planes (costing $70 million), yachts (two presently worth around $40 million), holdings in other businesses, other properties, trusts for previous wives, etc. We are presently dealing with the holding structures. Having completed this task, we are to turn our attention to the trading structures for Sibneft and Russian Aluminium. They will be in addition to the fees that I negotiated for now for the holding structures and trusts, their formation and ongoing administration. The first year fees excluding disbursements and extras (for holding houses and the additional trusts) total about $1.6 million.

…

Peter and I cannot see any reason to refuse accepting BB and AP as clients and to create the master structures to hold their assets for themselves and their families thus enabling them to leave their wealth under Common Law" [emphasis supplied]

464. Mr. Jenni said that the explanation of the source of the funds came from Mr. Fomichev, who, by late 2000, was closely involved in the management of Mr. Berezovsky's finances. Mr. Jenni himself did not know the details of what he referred to as Mr. Berezovsky's participation in Sibneft.

465. On 11 October 2000, Mr. Ian Gardiner of Valmet prepared a memorandum recording a meeting which he had had the previous day. Mr. Bond and Mr. Samuelson of Valmet were both present, as were Mr. Fomichev, Dr. Nosova, Mr. Jenni, and

Mr. Kay, "… and at one point during the meeting Mr. Borris Berisovsky [sic] attended the meeting for a couple of minutes". The memorandum recorded as follows:

> "During the meeting, Peter Bond asked the attendees what the principal motivating factors were in establishing the structure and why there was such a high degree of sensitivity and confidentiality. Hans Peter Jenni answered this question and stated that there were various reasons for the complicated and confidential structure:-
>
> 1. Hans advised that there was no suggestion of illegality or criminality in these matters. There were several parties who could be interested in our client's affairs including - commercial competitors, organs of the Russian State. Hans advised that the continuing power struggle in Russia made matters volatile at the present time and that they wanted a structure in place that would be difficult to breakdown if attacked by any interested party. In other words, the structure was set up in such a way to protect against 'political unrest'.
>
> 2. Hans advised that in the past the client's affairs had been run on an 'informal' basis. This structure had been set up to hold the client's assets in a more formal basis and create a compliant structure for the future.
>
> 3. Hans also advised that the structure had been set up in such a way to create as much confidentiality as possible. The idea being that if the structure is ever attacked by any 'interested party' each segment of the structure would stand -alone."

466. In January 2008, Mr. Samuelson was interviewed by the French and Swiss authorities during the course of criminal investigations into Mr. Berezovsky's affairs. In the course of that interview, Mr. Samuelson explained that he first met Mr. Berezovsky in Cap d'Antibes in 1999[236], having previously met with Mr. Fomichev in Geneva. Mr. Samuelson explained that, arising from these meetings, his aim was to place Mr. Berezovsky's holdings into a new structure, to allow for a long-term strategy with his assets, whether by passing assets to members of his family, or possible asset sales. Among these assets, Mr. Samuelson identified Sibneft in relation to which he said: "BEREZOVSKI [sic] and BADRY together held 48% of the shares". In relation to RusAl he said: "These two individuals held around 50%[237] of this company", explaining that Mr. Abramovich was the other major shareholder in each case.

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236 I suspect that this should have been a reference to 2000, given the dates of the various memoranda and the reference in Mr. Samuelson's Inter-Office Memorandum to "our new clients".

237 This was wrong, since on any basis Mr. Berezovsky's and Mr. Patarkatsishvili's claim to an interest in RusAl was never for more than 50% of Mr. Abramovich's 50% holding.

467. Mr. Rabinowitz submitted that it was inconceivable that Mr. Berezovsky and his team had given instructions to Valmet to put Mr. Berezovsky's interests in Sibneft (and for that matter, RusAl) into formal structures, in the terms set out in these documents, unless – at the very least – Mr. Berezovsky and his team believed that Mr. Berezovsky had such interests. He also submitted that Mr. Abramovich could provide no coherent reason why in early 2000 Mr. Berezovsky should be asserting to his professional advisers that he had interests in assets, if indeed he did not do so.

468. I disagree. The evidence clearly showed that by the beginning of 2000 Mr. Berezovsky not only was keen to have his assets held outside Russia so as "to provide protection from political attacks" but also appreciated that

> "… in order to comply with Western money laundering compliance requirements, it was necessary to have interests in assets formally recorded so that the source of funds could be demonstrated where required[238]."

He also confirmed in his oral evidence that he realised that in order to satisfy Western institutions in that respect he would need to have documents establishing his ownership of such assets. As he said:

> "I understood well that the words are not enough; you need to present the picture which they want to have."

And he agreed that the best way to do that was with documentary evidence – "-definitely it's the best way". By this stage he and Mr. Patarkatsishvili were well aware of the potential problems posed by money laundering regulations in relation to his receipts of large cash transfers from Mr. Abramovich and the likelihood that these would provoke enquiries about the source of the funds. He would have been well aware that, in order to answer such enquiries satisfactorily, he would need to be able to demonstrate that the funds represented the proceeds of an identifiable asset to which the fund recipient was entitled. By the summer of 2000 he must also have appreciated that there was a real prospect that he might have to leave Russia, and that he would therefore have to ensure that Western banks would be prepared, notwithstanding stringent money laundering procedures, to accept the receipt of his substantial income stream which hitherto had derived from undocumented Russian sources.

469. As Mr. Sumption submitted, and I accept, the fact that Mr. Berezovsky and Mr. Patarkatsishvili, or possibly Mr. Fomichev on their behalf[239], told Mr. Samuelson of Valmet, and other professional advisers, that they had substantial holdings in Sibneft (and RusAl) which constituted their major asset, does not, on my analysis of the evidence, assist Mr. Berezovsky's case. The need for documentary evidence to produce to the banks required Mr. Berezovsky, or his in-house financial advisers[240], to give the impression to third parties that he was entitled to capital assets to explain and justify his receipt of income streams. But it was not persuasive corroborative evidence that he did in fact have such an entitlement.

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238 See paragraph 429 of Mr. Berezovsky's 4th witness statement.

239 As Mr. Jenni said in his oral evidence.

240 Such as Mr. Fomichev or Mr. Joseph Kay.

470. As was submitted on behalf of Mr. Abramovich[241], the difficulty about all of these documents was that they were internal to the staff and professional advisers of Mr. Berezovsky and Mr. Patarkatsishvili and very little was known about the circumstances in which they were prepared. Mr. Berezovsky gave no specific evidence about them, and given his lack of detailed knowledge about his own financial affairs was probably in no position to do so. At paragraph 249 of his fourth witness statement he referred to using Mr. Samuelson to create the Hotspur and Octopus trusts "in order legally to formalise our interests in different businesses", but said that he was "not involved in the detailed arrangements". No one was called who was in a position to explain them. Dr. Nosova had nothing to say about them. Neither Mr. Fomichev nor Mr. Kay was called as witnesses, Mr. Berezovsky having fallen out with them. No one was called from Valmet. Those who prepared the planning documents can have had no source of information about any interest that Mr. Berezovsky and Mr. Patarkatsishvili might have had in Sibneft (or RusAl, for that matter) other than Mr. Berezovsky and Mr. Patarkatsishvili or their representatives such as Mr. Fomichev and Mr. Kay, who were in turn reliant for their information on their principals.

471. Whilst in ordinary circumstances, the fact that information of this kind was being imparted to third party professional advisers might carry some weight, in the particular circumstances in which Valmet was being giving such instructions, I cannot attribute much, if any, weight to them. The evidence showed that Mr. Berezovsky made inconsistent statements in public and in private about his assets, and that, by this stage, Mr. Berezovsky, Mr. Patarkatsishvili and their staff were extremely concerned by the need to satisfy Western money-laundering regulations, at a time when they were trying to shelter their assets in offshore trusts and companies, and were receiving very large sums of money from undocumented sources.

472. Moreover, it was clear from the evidence that on occasions professional advisers and other third parties were told that Mr. Berezovsky and Mr. Patarkatsishvili had shareholdings or other interests in capital assets, when they simply did not do so. For example, Mr. Samuelson's Inter-Office Memorandum referred to Mr. Berezovsky and Mr. Patarkatsishvili "… own[ing] a large stake in Aeroflot", and the Explanatory Note listed Aeroflot as one of Mr. Berezovsky's and Mr. Patarkatsishvili's business interests. Likewise Mr. Curtis told Clydesdale Bank in 2001, presumably on the basis of what he had been told by Mr. Berezovsky or Mr. Patarkatsishvili, or one of their staff, that Mr. Berezovsky "has shares in Aeroflot and receives Russian flyover fees". Mr. Berezovsky's English accountants, PwC, were also subsequently told that he had an interest in Aeroflot in the course of their investigation of his tax affairs. However the reality was (as Mr. Berezovsky accepted), that these statements were untrue and in fact the two men had no more than an income stream derived from the management of Aeroflot's non-rouble treasury operations by the Swiss company Andava.

473. The fact that Mr. Berezovsky, or members of his staff, were prepared to tell lies for the purposes of persuading the bank and others that an undocumented income stream from Aeroflot was legitimate income generated from a capital asset, does not provide me with any confidence that I should accept Mr. Berezovsky's contention that similar statements made to third parties as to his shareholding or interests in Sibneft are to be

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[241] See paragraphs 434 -435 of his written closing submissions.

regarded as corroborative evidence of his case in relation to the alleged 1995 and 1996 Agreements.

474. I deal with these materials in greater depth in the section of this judgment relating to the RusAl issues.

Private statements to friends, associates and staff

475. Mr. Berezovsky also sought to rely on statements which he, or Mr. Patarkatsishvili, had made to friends and staff to the effect that he and Mr. Patarkatsishvili owned a large stake in Sibneft. I did not find such evidence to be of any real corroborative weight or assistance in my assessment of the truth of Mr. Berezovsky's case. None of the statements were recorded in writing; the witnesses who spoke about them had been loyal and close friends of Mr. Berezovsky for many years; and some had received financial support from him. It was unclear precisely what Mr. Berezovsky had told them about his alleged "interest", and when. The evidence given by such persons was vague.

476. The evidence of Mr. Vladimir Voronoff was typical of this type of witness. He had been a very close friend of Mr. Berezovsky since 1994. In 2002 Mr. Berezovsky had bought him a flat to live in, in Holland Park Avenue, London. Mr. Berezovsky retained ownership of the flat. Mr. Voronoff did not suggest in his evidence that he made any payment in respect of his occupation of the flat. Apart from some meetings with potential Western investors, which came to nothing, because no Western investor was prepared to take the risk, he had had no involvement in the creation or acquisition of Sibneft. He admitted that what he knew "was all sort of second-hand information[242]." He had discussed Mr. Berezovsky's claims against Mr. Abramovich with Mr. Berezovsky on several occasions.

477. In paragraph 28-30 of his witness statement, he said:

> "28 During the times that I saw Mr. Abramovich and at the dinners we had in London, Sibneft would be discussed. These discussions were not in the nature of in-depth discussions, but rather we would talk about Sibneft in passing. For instance, I recall Mr. Abramovich saying at dinner that Boris, Badri and he were pleased with the progress they were making. At no point during any discussions with Boris, Badri or Mr. Abramovich (together, in combination or separately) have I ever heard any suggestion that Sibneft was Mr. Abramovich's project alone, or that it was a project in which Boris and Badri were in some way simply helping him out. Nor have I ever heard it suggested that Boris and Badri did not have an interest in Sibneft. The opposite is true. Mr. Abramovich, when talking of Sibneft, would always talk in terms of 'we' and never 'I'. Boris and Badri did the same. I recall Mr. Abramovich coming into the LogoVAZ club

[242] Voronoff Day 12, pages 142-143.

> one time in 1998 or 1999, saying 'We are having problems right now' and setting out how 'we' - being him, Boris and Badri – were concerned about some particular problem with Sibneft. It was always very clear that the project was a joint one and that each party had a significant interest in Sibneft.
>
> 29 When I say 'each party', it was my understanding from the conversations for which I was present and which I had with Boris, Badri and Mr. Abramovich, that Sibneft was owned 50% by Boris/Badri and 50% by Mr. Abramovich. I should say that there is simply no way that Boris (and so Badri) would not have had an interest in Sibneft. It was Boris's brainchild and something of which he was very proud.
>
> 30 Mr. Abramovich was very much a partner to Boris and Badri in Sibneft …"

478. He appeared to suggest that in the fairly close circle of friends "certain things were just taken entirely for granted[243]". He said that the word "partnership" was "always used", although this point had not been referred to in his witness statement[244]. Then, in re-examination, he said:

> "… what was accurate was that Boris told me many numerous times, and Badri did, that "we", meaning Boris and Badri, owned 50% of Sibneft, in so many words[245]."

479. It was clear from his cross-examination that his recollection and his understanding were extremely vague and that they both derived from what he had been told by Mr. Berezovsky and Mr. Patarkatsishvili. The following passage serves as an illustration:

> "Q. Now, you tell us in paragraph 29 of your statement, over two pages, on page 81 D2/15/81, that your understanding was that Mr. Berezovsky and Mr. Patarkatsishvili owned 50 per cent of Sibneft.
>
> A. Yes.
>
> Q. Do you mean to indicate by that that you understood that at some point they directly owned 50 per cent of Sibneft, in the sense of either owning it themselves or through corporate entities that they owned?
>
> A. Neither really. You know, I didn't really think of how exactly. I mean, I was pretty sure -- if I was

243 Voronoff Day 12, pages 143-144.
244 Voronoff Day 12, pages 144-145
245 Voronoff Day 12, page 157.

> questioned at that time, I would be pretty sure to say that not directly, but in actual fact, so de facto rather than de jure."

480. I was unable to place any serious weight on Mr. Voronoff's evidence as supporting Mr. Berezovsky's case.

481. My conclusions are similar in relation to the evidence of Mr. Alexander Davidovich Goldfarb, another close friend of Mr. Berezovsky's. Mr. Goldfarb had been employed by Mr. Berezovsky for a brief period in 1997/98, when he provided political consultancy services to Mr. Berezovsky from New York. Thereafter he had been employed by him from late 2000-2006 as the chief operating officer of Mr. Berezovsky's International Foundation for Civil Liberties, which Mr. Goldfarb established in New York and of which Mr. Berezovsky was the sole funder. From 2006, the activities of this foundation reduced. Nonetheless, Mr. Goldfarb continued to be paid consultancy fees by Mr. Berezovsky thereafter. He said that, in the period from 2006, approximately 40-50% of his time was spent working for Mr. Berezovsky or his entities, and that, in the period from 2001 – 2006, approximately 40-50% of his income derived from Mr. Berezovsky. He said that Mr. Berezovsky had introduced Mr. Abramovich to him as his "partner", but his recollection was very vague[246]. Indeed, far from it being the case, as he had suggested in his witness statement, that Mr. Shvidler had said to him that Mr. Berezovsky was a shareholder[247], Mr. Goldfarb relied instead on the fact that it "went without saying … everybody knew that he [Mr. Berezovsky] is the principal there[248]"

482. Likewise, I was unable to place any serious weight on the evidence of Mr. Leonid Nevzlin as to his belief that Mr. Berezovsky was a shareholder in Sibneft. Mr. Nevzlin was another longstanding friend of Mr. Berezovsky. He had been *inter alia* President of Bank Menatep, Vice President of Yukos in 1996, and later First Deputy Chairman of the Yukos-Moscow board. He had left Russia on 31 July 2003 and moved to Israel in August 2003, before becoming an Israeli citizen later that year.

483. His evidence in relation to Sibneft can be briefly summarised as follows. In his written statement, he said:

> 15 I learnt of the dealings between Messrs Berezovsky, Patarkatsishvili, Abramovich and Shvidler in relation to Sibneft from my frequent conversations with them, both separately and together, on numerous occasions from 1995 onwards (although I believe I only met Mr. Abramovich and Mr. Shvidler for the first time in the early months of 1996) …
>
> 16 As I remember it, Mr. Abramovich appeared in Mr. Berezovsky's circle and amongst his people with the idea for creating Sibneft at around the time of the loans-for-shares auctions in the summer of 1995. At

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246 Goldfarb Day 13, pages 25-26.
247 Goldfarb 1st witness statement, paragraphs 30-31.
248 Goldfarb Day 13, page 27.

that time, Mr. Abramovich had no money and no connections. He thus brought the idea of establishing a new oil company, which was later named Sibneft, to Mr. Berezovsky, with the intention of relying on Mr. Berezovsky's skills, expertise and political connections to ensure that the idea which he had in mind was seriously heard and considered within the Government. I know, based on a conversation with Mr. Aven that Mr. Abramovich had approached Mr. Aven and Mikhail Friedman first with the idea, but both had told him that Mr. Berezovsky was the only person who could successfully lobby for the creation of Sibneft and convince the Government of the merits of such an idea. Mr. Abramovich knew what to do and how to do it at a management level, but it was only Mr. Berezovsky who could raise support within the Government for including Sibneft in the privatisation process, which he successfully managed to do.

…

18 As explained to me by Mr. Patarkatsishvili, the arrangement was that Mr. Abramovich's people - Mr. Shvidler, David Davidovich and so on - would become the managers of the company, and in return Mr. Abramovich would have a portion of the company. However, Mr. Berezovsky and Mr. Patarkatsishvili would always have the final say in any major decisions affecting the company.

19 In 1995, I did not know what proportion of the company Mr. Abramovich would be receiving. I assumed that Mr. Berezovsky and Mr. Patarkatsishvili would have by far the greater share of the business. Given the unique ability that Mr. Berezovsky had to lobby successfully for the creation of Sibneft, and the importance of his political influence generally, compared to the small contribution being made by Mr. Abramovich - I would have regarded a fair split as being ninety per cent for Mr. Berezovsky and Mr. Patarkatsishvili, and ten per cent for Mr. Abramovich. Mr. Abramovich's contribution was one which could have been provided by any of a number of people; to my knowledge, he had no particular skills, expertise or connections. Mr. Berezovsky and Mr. Patarkatsishvili could have just compensated him for his idea; they didn't need to make him a partner.

20 I was later shocked to discover, from my discussions with Messrs Berezovsky, Patarkatsishvili, Abramovich

and Shvidler, as well as from conversations with Mr. Khodorkovsky, that Mr. Berezovsky had actually agreed to Mr. Abramovich having fifty per cent of the company. I regarded that as extraordinarily generous given Mr. Berezovsky and Mr. Abramovich's unequal contributions to the creation of Sibneft. I learnt this during the abortive attempt to merge Yukos and Sibneft into a company called Yuksi in 1998. Though I was not personally involved, during the merger negotiations, Mr. Khodorkovsky told me and Mr. Dubov that he had been shown papers by Mr. Abramovich which made clear that Mr. Berezovsky and Mr. Patarkatsishvili had a fifty per cent stake in Sibneft. I think Mr. Khodorkovsky told me that these were Runicom papers. I was not shown or given a copy of these papers myself.

…

23 At various times, I had many discussions with Mr. Abramovich and Mr. Shvidler in which they both said not only that Mr. Berezovsky had an interest in Sibneft, but that he had the last word when it came to taking decisions for the company.

24 Mr. Patarkatsishvili was less visible. I understood he was a partner of Mr. Berezovsky but I also understood that oil and gas was not his main area of business, so I was not surprised that he took less of a visible role in Sibneft. Mr. Abramovich was the oil man so he had the more visible role in Sibneft, but Mr. Berezovsky was always Number One in Sibneft, and it was generally understood that Mr. Berezovsky and Mr. Patarkatsishvili were partners in most, if not all, of their businesses, as I describe in more detail below.

…

26 As far as I know, Sibneft was a very profitable company, with low taxes and high exports. I understood from Mr. Berezovsky that it was from his oil business, which I understood to be Sibneft, that he received funds for their most of his personal needs and political projects, mainly arranged by Mr. Shvidler. I think he told me that this included the money he used to pay for his property in the South of France (where I visited him on two occasions). I can also recall conversations with Mr. Abramovich and Mr. Shvidler in 1998 or 1999 where they told me they were sick of paying for Mr. Berezovsky's political projects."

484. Like Mr. Berezovsky, Mr. Nevzlin is also a fugitive from Russia. He described his personal position in his witness statement as follows:

> "55 I have been convicted of murder and attempted murder in absentia in Russia, where I also face charges for embezzlement and tax evasion. I am not guilty of any of these offences. These criminal proceedings are politically motivated and form part of the Russian authorities' manipulation of the Russian 'justice' system in relation to all those somehow related to Yukos and perceived to be a political threat. My trial in absentia was based on unsubstantiated hearsay and hearsay-on-hearsay statements made during the investigation of the case, including by witnesses who later testified that they had lied during the investigation based on pressure applied by Russian authorities. My convictions resulted from blatantly unfair proceedings and were arrived at without any respect for due process or the truth. On numerous occasions, the Russian authorities have requested my extradition from Israel in reliance on the charges against me. The Israeli Supreme Court has upheld the decision not to act on these extradition requests, specifically as to the fabricated murder and attempted murder charges, because the Russian case lacked the evidentiary foundation necessary to support extradition under Israeli law."

For the purposes of judging his credibility as a witness in these proceedings, I assume that what Mr. Nevzlin has said in paragraph 55 is true and that he is innocent of all such charges.

485. Mr. Nevzlin gave his evidence through a translator and by means of a video link connection from New York. Despite these practical constraints, I was not impressed with him as a witness. A few days before Mr. Nevzlin gave his evidence, Mr. Berezovsky had, in the middle of this trial, gone to Tel Aviv. The two men had met and they had discussed the case. According to Mr. Nevzlin, what had been discussed was

> "Only the overall information for Mr. Berezovsky that I was going to be a witness and that on all the questions that I was asked, I would speak the truth and the nothing but the truth."

486. Whilst *per se* there is nothing inherently surprising or suspicious about such discussion, I formed the impression that Mr. Nevzlin had crafted his evidence to suit Mr. Berezovsky's case. As his witness statement and his oral evidence made clear, because of what Mr. Nevzlin regarded as Mr. Abramovich's obstructive and opportunistic approach to two successive proposals for a merger between Sibneft and Yukos, he was antagonistic towards Mr. Abramovich. Both in his witness statement and in cross-examination, he was tendentious and expressed opinions about matters in respect of which he had no knowledge. His evidence was undermined to a

considerable extent in cross-examination. He had not been personally involved in the Sibneft project, the loans-for-shares auction or the subsequent privatisations[249]. He had no direct knowledge of relevant matters and his statement had clearly been based on what he had been told by others. He repeatedly insisted that Mr. Patarkatsishvili had told him that he and Mr. Berezovsky would always have the final say in any major decisions affecting Sibneft, and that Mr. Abramovich and Mr. Shvidler had subsequently confirmed this. In re-examination he reiterated the suggestion that Mr. Abramovich had said that he and Mr. Berezovsky were equal partners in Sibneft, with Mr. Berezovsky having the final say, and added the somewhat surprising comment that apparently Mr. Abramovich had actually said, in relation to ownership of Sibneft, that Mr. Berezovsky "was like *primus inter pares*" - the senior among equals[250]. I very much doubt whether Mr. Abramovich would have made a statement in those terms. If it was indeed agreed that Mr. Berezovsky was to have had the final say in important decisions relating to Sibneft, that was belied by Mr. Nevzlin's own evidence about Mr. Abramovich blocking the first proposal for a Sibneft/ Yukos merger.

487. Mr. Nevzlin also repeated in cross-examination his evidence about what Mr. Khodorkovsky had told him at the time of the abortive Yuksi merger project of 1998, albeit in slightly different terms from paragraph 20 of his witness statement. Initially he said that Mr. Khodorkovsky had told him that he, Mr. Khodorkovsky, had seen:

> "… with his own eyes the partnership agreement, the partnership documents signed between Abramovich and Berezovsky -- Patarkatsishvili, Abramovich and Berezovsky … they were Runicom papers, I think.[251]"

488. Subsequently he said that Mr. Khodorkovsky had not told him "anything about whether these were signed or not signed"; and asserted that the translation had been wrong, and what he had said was that:

> "Mr. Khodorkovsky told Mr. Dubov and me that he saw papers that showed that Mr. Abramovich, Berezovsky Patarkatsishvili were 50% partners in Sibneft.[252]"

489. It was apparent that Mr. Nevzlin could say very little about the alleged documents. Mr. Abramovich's evidence is that no such documents existed[253], and no one else has ever suggested that they did.

490. In the circumstances I cannot attach any significant weight to Mr. Nevzlin's evidence.

The Curtis Notes

491. Mr. Rabinowitz submitted that Mr. Berezovsky's case on the alleged 1995 Agreement was supported and corroborated, and Mr. Abramovich's case shown to be untrue, by

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249 Nevzlin Day 15, page 58; Day 15, page 64.
250 Nevzlin Day 15, page 86.
251 Nevzlin Day 15, page 73.
252 Day 15, pages 73-75.
253 Abramovich 4th witness statement, paragraph 37 .

some undated handwritten notes referred to in these proceedings as "the Curtis notes". The notes were written by a solicitor, Stephen Curtis, a former partner in Curtis & Co, who died on 3 March 2004. He acted for Sheikh Sultan and his companies (Spectrum and Devonia) in relation to the sale of Mr. Berezovsky and Mr. Patarkatsishvili's shares in ORT and in relation to the Devonia transaction, to which I refer below. The notes purported to record a meeting with Mr. Patarkatsishvili at his house in Georgia in the summer of 2003, attended by Mr. Curtis, Mr. Fomichev, Mr. Tenenbaum and an unidentified fourth participant named "Igor".

492. In relation to Sibneft, the notes purport to record Mr. Patarkatsishvili stating:

> "B - few years ago several people owned several plants - willing to sell shares.
>
> At that point shareholders of Sibneft bought most of these plants.
>
> Shareholders of S - Bors/Bad/Roman/
>
> We sold Sibneft so far no problems with deal."

The Notes also purport to record that Mr. Patarkatsishvili and Mr. Berezovsky had a 25% interest in RusAl and that the meeting was concerned with arrangements for the sale of that interest to Mr. Abramovich.

493. Given their author, the circumstances in which they were produced and the evidence of the only participant in the meeting to have been called as a witness, namely Mr. Tenenbaum, I conclude that they are of very little evidential weight. In my judgment I cannot rely upon them as providing any real support for Mr. Berezovsky's case in relation to Sibneft. I address the evidence relating to the Curtis notes in more detail in the context of the issues relating to RusAL.

The evidence from other proceedings

494. Mr. Rabinowitz submitted that Mr. Berezovsky's account of the alleged 1995 and 1996 Agreements was also corroborated by a considerable body of evidence given in other proceedings. He referred in particular to the Valmore and Summit Proceedings. These were proceedings issued on 21 April 2008, in the Chancery Division of the Supreme Court of Gibraltar by Miselva Etablissement, a Liechtenstein trust company ("Miselva"), and Nexus Treuhand AG, a Swiss trust company ("Nexus") ("the Gibraltar proceedings"). Nexus was the trustee of a trust called the Valmore Trust. Miselva was a trustee of a trust called the Summit Trust. Nexus and Miselva, as the claimant trustees, sought directions from the court as to how to distribute the assets of the two trusts. The defendants to the claim were Ms. Gudavadze, Mr. Patarkatsishvili's widow and one of the Family Defendants; Joseph Kay; Iya Patarkatsishvili and Liana Zhmotova, daughters of Mr. Patarkatsishvili by his marriage with Ms. Gudavadze; and Fallon Invest & Trade Inc, a British Virgin Islands company and protector of the Valmore and Summit Trusts.

495. Mr. Rabinowitz relied upon the following evidence in the Gibraltar proceedings:

i) evidence given by Mr. Samuelson to the effect that Mr. Berezovsky and Mr. Patarkatsishvili had each established trusts to receive sale proceeds from their Sibneft interests;

ii) evidence given by Ms. Gudavadze, to the effect that Mr. Patarkatsishvili had "sold part of his assets", agreeing that "He sold Sibneft, he sold ORT, he sold his interest in RusAl";

iii) evidence given by a Mr. De La Paz, an adviser of Mr. Kay, to the effect that Mr. Patarkatsishvili had held interests in Sibneft, ORT and RusAl;

iv) the fact that, in those proceedings, it was the Family Defendants' case that Mr. Berezovsky and Mr. Patarkatsishvili had sold their interests in Sibneft to Mr. Abramovich, via Devonia.

The North Shore proceedings

496. On 20 August 2008, North Shore Ventures Limited ("North Shore"), issued proceedings in the Chancery Division of the High Court in London against Anstead Holdings Inc ("Anstead") ("the North Shore proceedings"). In those proceedings North Shore, a company incorporated in the British Virgin Islands and affiliated with Mr. Berezovsky, claimed repayment of the outstanding portion of a loan of $50 million, made to Anstead pursuant to a written agreement dated 14 March 2003, together with interest. North Shore also sued Mr. Fomichev and Vasily Peganov, shareholders in Anstead who had guaranteed Anstead's obligations under the loan agreement.

497. Mr. Rabinowitz relied in particular upon the evidence given by Mr. Fomichev the North Shore proceedings, to the following effect:

i) In relation to the initial discussion of the loan made to Anstead Holdings Limited, Mr. Fomichev said in oral evidence:

> "We - at the time, in 2002 and 2002 beginning of 2003, we did a big fund together where Curtis was holding interest on my behalf. Mr. Curtis and I just finalised the big transaction done by Badri and Mr. Berezovsky regarding the sale of Sibneft, where Mr. Curtis was acting for the sheikh's side but helping Mr. Berezovsky with his own affairs on the side of Mr. Berezovsky"

ii) In relation to the provenance of the loan monies, Mr. Fomichev said as follows:

> "Q. While you were trustee of the Itchen Trust, you were also involved in assisting with the Sibneft transaction?
>
> A. Becoming a trustee in Itchen Trust was part of the Sibneft transaction, where I acted on behalf of Mr. Badri Patarkatsishvili mainly and Mr. Berezovsky

as a beneficiary of this deal. That's why Itchen Trust was organised, yes.

Q. It was the Itchen Trust which held money which was the source of the loan made to Anstead.

A. Yes, I know now. ...

Q. You knew that the money came from Sibneft and you knew that the Sibneft money went into Itchen Trust?

A. Yes.

Q. So you knew that the money that was loaned to Anstead came out of the Itchen Trust, having derived from the Sibneft transaction?

A. Yes."

iii) In cross-examination, when questioned about how the terms of the loan from North Shore to Anstead could have been agreed orally between the parties, Mr. Fomichev said:

"How? Because all the business that Mr. Berezovsky was doing was based on this agreement. For example, I can give you an example on that. The agreement between Mr. Abramovich and Boris Berezovsky of 50 per cent interest in Sibneft was never documented or agreed on paper."

498. Mr. Rabinowitz also relied upon what the trial judge, Newey J, said in relation to "the Sibneft transaction" in the following passage of his judgment:

"The money held by the Itchen Trust, some of which was appointed in favour of Mrs Berezovskaya and then lent to Anstead, derived from the sale of Mr. Berezovsky's interest in Sibneft. The sale was effected, Mr. Berezovsky explained, by means of a structure proposed by Mr. Curtis, and in which Sheikh Sultan from Abu Dhabi was interposed between Mr. Berezovsky and Mr. Roman Abramovich. Mr. Fomichev confirmed in evidence that he knew that the money lent to Anstead came out of the Itchen Trust and was derived from the Sibneft transaction[254]."

499. In this context, Mr. Rabinowitz submitted that:

i) The Court should accept Mr. Fomichev's evidence in this respect on the grounds that it:

"… was common ground [in those proceedings] between the parties that the monies loaned by North Shore to Anstead were

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254 *North Shore Ventures Limited v Anstead Holdings Inc* [2010] 2 Lloyd's Rep 265, at paragraph 54.

> a portion of the proceeds of the sale of Mr. Berezovsky's interest in Sibneft"
>
> and that:
>
> "… this was Mr. Fomichev's own evidence, and it was not disputed. Indeed, several other witnesses made reference to the fact that Mr. Berezovsky had held, and sold, an interest in Sibneft."

ii) Witnesses for both sides in the North Shore proceedings had made reference to "the Sibneft transaction"; had they not believed the transaction to have been genuine, it is reasonable to suppose they would not have spoken about it at all whilst under oath.

iii) Mr. Fomichev's oral evidence about the Sibneft transaction was consistent with that of the other witnesses, including Mr. Berezovsky and Dr. Nosova (amongst others), whom the trial judge had held to be truthful.

iv) Since the nature of the Sibneft transaction was not in issue in the North Shore action, it is probable that Mr. Fomichev told the truth about it: what he said would have no impact on the issues in the case, and there was therefore no reason for him to lie.

500. I conclude that little weight, if any, can be attached to the evidence given in the Gibraltar proceedings or in the North Shore proceedings, in relation to Sibneft. Neither Mr. Abramovich, nor any related company of his, was party to such proceedings and neither he, nor they, had any interest or involvement in them. They were classic - if one is permitted to use the Latin tag - *res inter alios acta*.

501. My reasons for this conclusion, in summary, are as follows:

i) The dispute in the Gibraltar proceedings was one between Mr. Patarkatsishvili's family and Mr. Kay; the principal issues were:

a) who had settled the assets of the Valmore and Summit trusts;

b) who was to be regarded as the "real settlor of each asset"; and

c) whether trusts known as the Valmore and Summit Trusts had been established primarily for the benefit of Mr. Patarkatsishvili's family (comprising for these purposes, Ms. Gudavadze, Ms. Patarkatsishvili and Mrs Zhmotova); or, alternatively, whether they had been established for the benefit of Mr. Kay.

ii) Thus the issue whether Mr. Berezovsky or Mr. Patarkatsishvili had a shareholding interest or entitlement in Sibneft, or merely an income stream or cash payment "entitlement" under an arrangement with Mr. Abramovich, which related to Sibneft, was simply not an issue in contention in the Gibraltar proceedings. There was no doubt that substantial payments had indeed been received by Mr. Berezovsky and Mr. Patarkatsishvili. It was not in the least

surprising in the circumstances that that all parties proceeded on the assumption that they derived from some sort of "interest in Sibneft".

iii) The evidence given by Mr. Samuelson was dependent upon, and derived from, what he had been told by Mr. Berezovsky and his in-house advisers. I have already addressed the quality of the instructions which he was given above. Mr. Berezovsky did not choose to call Mr. Samuelson in these proceedings.

iv) Evidence given by other advisers to Mr. Berezovsky, Mr. Patarkatsishvili or by Mr. Kay (or by his adviser) was similarly dependent upon what they had been told by Mr. Berezovsky or Mr. Patarkatsishvili. It was not suggested that they had any direct knowledge of the alleged 1995 and 1996 Agreements. Similar comments may be made about the evidence given by the Family Defendants or the case presented on their behalf. There was simply no need to explore the detail of the so-called "Sibneft interest" in those proceedings.

v) Mr. Fomichev, who was Mr. Berezovsky's general financial factotum from 1999 onwards, was described by Mr. Berezovsky in his evidence in the North Shore litigation, as "the only person who knew everything" in the period after his flight from Russia in October 2000. He told Mr. Samuelson in 2000 that Mr. Fomichev was "effectively the most trusted lieutenant of BB and AP, who handles their personal affairs". He was not called as a witness in these proceedings by Mr. Berezovsky. The latter regarded Mr. Fomichev as a "crook" against whom one of his companies had an outstanding judgment, as a result of the North Shore proceedings, for over $35 million. Mr. Fomichev was not present at the time of the making of the alleged 1995 and 1996 Agreements, so again his evidence would have derived from his understanding, or interpretation, of what Mr. Berezovsky or Mr. Patarkatsishvili told him. Whilst one can understand Mr. Berezovsky's reluctance in such circumstances to call Mr. Fomichev, given his absence as a witness in these proceedings, I would be reluctant to place any weight on his evidence in the North Shore proceedings, where the relevant issue for present purposes simply did not arise for determination. The fact that his evidence on this point was - not surprisingly – not contested by Mr. Berezovsky hardly makes it more valuable. That view is reinforced by my view as to Mr. Fomichev's conduct in connection with the Devonia transaction, to which I refer below. I also deal, in the RusAl section of this judgment, with Mr. Rabinowitz's argument that adverse inferences should be against Mr. Abramovich for <u>his</u> failure to call Mr. Fomichev.

vi) Mr. Kay, who was a relative of, and formerly aide and adviser to Mr. Patarkatsishvili, was held in the Gibraltar proceedings to have forged documents. Similar considerations apply to him as to Mr. Fomichev.

502. In the circumstances, the comments in the judgments of Newey J in the *North Shore* proceedings and of the Gibraltar Court in the Gibraltar proceedings are of no assistance in relation to my determination of the issues relating to Sibneft.

Mr. Patarkatsishvili's proofs

503. Mr. Rabinowitz submitted that Mr. Patarkatsishvili's proofs of evidence and proofing notes corroborated Mr. Berezovsky's account of the alleged 1995 Agreement, and demonstrated that Mr. Abramovich's recent attempts to re-categorise that relationship as one of *krysha* to be false. He pointed to the evidence of statements made by Mr. Patarkatsishvili during his proofing sessions which, Mr. Rabinowitz claimed, unequivocally recognised that Sibneft was jointly owned by Messrs Berezovsky, Patarkatsishvili and Abramovich. By way of example, he referred to the notes prepared by Mr. Andrew Stephenson, a partner in Carter-Ruck, Mr. Berezovsky's solicitors at the time, taken at a meeting in June 2005 at Mr. Patarkatsishvili's home in Tbilisi. These notes record the following:

> "Sibneft Shareholders
>
> 50/50
>
> Roman 50 – BP/BB 50%
>
> Roman who brought idea – in while RA idea to make business – From beginning want to split 3 ways – RA know how to run the business. No human resources to manage company. Wanted RA to feel as partner"

504. Mr. Rabinowitz also referred to the notes of another solicitor, Mr. James Lankshear, of Streathers, another firm acting for Mr. Berezovsky at the time. His notes of the same meeting similarly recorded:

> "Initial sharing – Sibneft – 50/50. BB/BP and RA. RA [brought] idea to BB. Always 3 shares. BB suggested that RA have greater share as he knew how to manage business."

505. Mr. Rabinowitz also submitted that such evidence was confirmed by the evidence of Ms. Michelle Duncan, a partner at Cadwalader, solicitors, who subsequently acted for Mr. Berezovsky in these proceedings. She gave evidence based on a meeting which she had had with both Mr. Patarkatsishvili and Mr. Berezovsky in Tel Aviv in November 2007. She understood Mr. Patarkatsishvili's position to be that Sibneft was acquired 50:50 between Mr. Abramovich, on the one hand, and Mr. Berezovsky and Mr. Patarkatsishvili on the other. Mr. Ian McKim, a barrister at Cadwalader working on the case at the time, was also at the meeting and gave similar evidence.

506. In my judgment, it is not possible to attach any significant weight either to the proofing notes of what Mr. Patarkatsishvili said in 2005 and 2007, or indeed the (very) draft "proofs of evidence" produced by the solicitors as corroborative of Mr. Berezovsky's case. Neither the notes nor the draft proofs were ever sent to Mr. Patarkatsishvili for his approval or comment.

507. By the time of the meeting in Tbilisi in 2005, Mr. Berezovsky had already decided to bring proceedings against Mr. Abramovich. Mr. Patarkatsishvili was clearly willing to assist Mr. Berezovsky in formulating his claim, but not, apparently, prepared to be a co-claimant. According to Ms. Duncan's evidence, by the date of the Tel Aviv

meeting in 2007, Mr. Patarkatsishvili's position was that he still had relations with Mr. Abramovich, and hoped that he might be able to resolve the matter with Mr. Abramovich, but there was a possibility that he, Mr. Patarkatsishvili, would join Mr. Berezovsky's action later. At the meeting in 2005, Dr. Nosova was present and, according to a draft proof of evidence prepared by Mr. Stephenson and Mr. Lankshear, translated Mr. Patarkatsishvili's evidence into English (except over lunch, when Mr. Patarkatsishvili's wife did so). The proof recorded that "At other times, Mr. Patarkatsishvili spoke English". At the meeting in 2007, where Mr. Berezovsky was present throughout, both Ms. Duncan and Mr. McKim said that Mr. Berezovsky did most of the talking, and indeed, Ms. Duncan's subsequent (2011) attribution of who said what at the meeting suggests that it was Mr. Berezovsky who was referring to the 50:50 split of share ownership and profit entitlement in relation to Sibneft. Accordingly, it is highly likely that the statements recorded as having been made by Mr. Patarkatsishvili were not only based upon discussions with Mr. Berezovsky and/or Dr. Nosova as to how best to present Mr. Berezovsky's case, but also self-serving.

508. By the time of the interviews, both Mr. Patarkatsishvili and Mr. Berezovsky had made numerous representations to Western professionals which allowed funds to be moved by them in the west and which would have been wholly undermined if Mr. Patarkatsishvili had departed from them. Moreover, such representations had been supported by documents produced for that purpose. Had Mr. Patarkatsishvili now given any other account as to the source of their funds, it would have harmed not only the interests of his friend, Mr. Berezovsky, but his own. It is unsurprising that he chose not to do so. What Mr. Patarkatsishvili did not do, however, at any stage, was to threaten or assert any claims against Mr. Abramovich.

509. The unreliability of the notes is demonstrated, for example, by what Mr. Patarkatsishvili is recorded as having said about the financing of the acquisition of the 51% interest in Sibneft. In the proof prepared by Messrs Stephenson and Lankshear after the meeting, the following is recorded:

> "[Under the 'loans for shares' programme BB and partners loaned $100.3 million to the Government in December 1995 in return for the right to manage its 51% interest. On 12 May 1997 (when the loan as expected had not been repaid) a BB/BP/RA vehicle successfully bid $110 million (i.e. paying further $9.7 million) for the right to manage the shares – see Eurobond prospectus.]
>
> RA's capital input was fairly small – I do not know exactly how much he contributed, to the best of my recollection it was at most a few million dollars, certainly less than $10 million. We provided the remainder of the capital from our own resources. We had to pledge assets, obtain bank credits etc. It was BB who raised the finance, negotiating around the world; we had to pledge everything, but I had a clear understanding that the project would prove to be profitable. [i.e. as long as Yeltsin was re-elected.]"

510. That passage reflected what had been recorded in both Mr. Stephenson's and Mr. Lankshear's notes. It was clearly incorrect in a number of respects:

i) Mr. Abramovich's Trading Companies had provided in excess of $17 million;

ii) Mr. Patarkatsishvili and Mr. Berezovsky did not provide "… the remainder of the capital", or, indeed, any capital from their own resources;

iii) Mr. Patarkatsishvili and Mr. Berezovsky did not "pledge assets" or "obtain bank credits"; and

iv) it was not Mr. Berezovsky who raised the finances.

511. The draft proof of evidence was sent to Dr. Nosova. It was never sent to Mr. Patarkatsishvili. Similarly, a subsequent draft statement prepared by Mr. McKim was not sent to Mr. Patarkatsishvili. Nor were the attendance notes.

512. Taken at face value, and put at their highest, the notes recording Mr. Patarkatsishvili's statements about 50:50 shareholdings and 50:50 profit share undoubtedly support Mr. Berezovsky's case. They also reflect what appears to be Mr. Patarkatsishvili's sense of entitlement to a 50:50 interest in Sibneft.

513. But given the date at which, and the circumstances under which, the proofing materials were compiled, and the inevitable absence of Mr. Patarkatsishvili for cross-examination on their content, I do not regard them as having sufficient evidential weight to persuade me not to accept Mr. Abramovich's evidence on the issues which the notes address. Ultimately, the notes reflect self-serving statements by Mr. Patarkatsishvili and Mr. Berezovsky. They are not corroborative evidence as to the terms of the alleged 1995 and 1996 Agreements, or any legal entitlement to an interest in Sibneft.

xii) the payments of: a) $1.3 billion in July 2002; and b) $575 million to Mr. Patarkatsishvili in 2004

514. I deal with these topics in subsequent section of this judgment: the payment of $1.3 billion is dealt with in Sections XI and XII; the payment of $585 million is dealt with in Section XV. My conclusion, as stated, is that the evidence relating to these payments does not support Mr. Berezovsky's case.

xiii) The nature and alleged inconsistency of Mr. Abramovich's krysha allegation

515. Mr. Rabinowitz submitted that the nature and constant shift of Mr. Abramovich's case on *krysha* could not be the product of any honest mistake on his part, but rather was a deliberate strategy agreed with other witnesses. He submitted that there was no allegation of *krysha* in the defence; that it had been redefined at trial to extend no further than lobbying; that the allegation that the *krysha* provided went beyond lobbying to include physical protection had been abandoned; that, Mr. Abramovich could not even identify any alleged acts of *krysha* provided by Mr. Berezovsky after 1995; and that the constantly shifting sands of Mr. Abramovich's case on *krysha* served only to demonstrate its obvious falsity.

516. I do not accept these submissions, which were not supported by the evidence. The Defence had always referred to the provision of Mr. Berezovsky's personal and political influence to benefit Mr. Abramovich, and Mr. Berezovsky's provision of "protection" in respect of Sibneft: see in particular paragraphs D32, D33 and D45.2. It had always been part of Mr. Abramovich's pleaded case that Mr. Patarkatsishvili had provided physical protection in respect of RusAL; see paragraph D59. Whilst I accept that there was some lack of clarity in Mr. Abramovich's pleaded case, Mr. Sumption stated the position perfectly clearly in his oral opening submissions, as well as in his closing submissions. The detailed nature and extent of the relationship was one essentially for evidence and Mr. Abramovich had fully set out the position in his witness statement. In cross-examination Mr. Abramovich gave a plausible explanation as to why the word *krysha* had not appeared in the pleading:

> "Q. Mr. Abramovich, one observes thatyou do not here use the phrase 'krysha'. Can you explain why not, please?
>
> A. The word 'krysha' is a very aggressive term and usually it was used with respect to criminal protection racket, but we also have the term 'krysha' in political terms. And at the very beginning I was not very clear as to how I should define this and I did not want to offend the claimant, but this is exactly what happened at the very beginning."[255]

517. Moreover, contrary to Mr. Berezovsky's assertion, there was evidence that Mr. Abramovich had continued to utilise his services after 1995 (for example in relation to the Yuksi merger) and, as the latter explained, the mere fact that such an apparently powerful man as Mr. Berezovsky appeared to be associated with Mr. Abramovich and Sibneft was, at least during the height of Mr. Berezovsky's powers, protection in itself. As described by Mr. Berezovsky's expert on Russian contemporary history, *krysha* is a relationship of protection by association with a powerful person[256]. It is not a contract for particular services to be performed on demand. Mr. Abramovich's evidence had always been to the effect that the ongoing association of Mr. Berezovsky with Sibneft within Russia operated as a protective force right up until Mr. Berezovsky fell out of favour following the Kursk affair[257]. Furthermore, contrary to Mr. Rabinowitz's submission, I did not find that there was any inconsistency between political patronage and the fact that the two men holidayed and socialised together.

518. I have already dealt with the alleged change (or rather expansion) of Mr. Abramovich's case in relation to the original purpose of the payments being to finance ORT.

519. Accordingly, I do not accept the submission that the nature or such change as there may have been in the articulation of Mr. Abramovich's case in relation to *krysha* provides a sufficient reason for rejecting his evidence in relation to the issue.

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255 Day 17, page 20.

256 Fortescue 1st Report, paragraph 188-190.

257 Abramovich 3rd witness statement, paragraph 35.

Conclusion on Issue A1

520. My conclusion in relation to this issue is that there was no such agreement of the nature and in the terms alleged by Mr. Berezovsky in paragraphs C33-C34 of the Re-re-re-Amended Particulars of Claim and paragraphs 97-105 of Mr. Berezovsky's fourth witness statement, nor as subsequently developed in his case at trial. Nor was any agreement reached in 1996 between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in the terms alleged in paragraph C37 of the Re-re-re-Amended Particulars of Claim.

521. On the contrary, the evidence established that the arrangement between the parties was that Mr. Abramovich would provide payments towards Mr. Berezovsky's (and subsequently Mr. Patarkatsishvili's) expenses, not only in connection with ORT, but also generally, in exchange for Mr. Berezovsky's assistance, protection or *krysha,* and subsequently that of Mr. Patarkatsishvili. The actual amounts to be paid were agreed each year as between Mr. Abramovich and Mr. Patarkatsishvili as a result of a process of negotiation.

Section IX

Issue A2: If the three parties reached agreements in the terms of the alleged 1995 and 1996 Agreements, as asserted by Mr. Berezovsky, were those agreements valid as a matter of Russian law, which, it is common ground, must have governed them?

522. In the light of my findings in relation to Issue A1, this issue does not arise for determination. In case this matter goes further, I nonetheless express my conclusions in relation to the issue, but without rehearsing, at any great length, the evidence of the Russian law experts, or the respective arguments of the parties, in relation to what, in the event, was a wholly hypothetical issue. It will be obvious that I have not addressed every one of the numerous and sophisticated arguments which were presented on this point in the course of hundreds of pages of written expert evidence and written submissions, and three and a half days of oral evidence.

523. The Russian law issues in relation to the alleged 1995 and 1996 Agreements as formulated in the Agreed List of Issues were considerably more complex than the issue as I have formulated it above. In order for my conclusions to be comprehensible, I set out the Russian law issues as defined in the Agreed List of Issues in relation to the alleged 1995 and 1996 Agreements:

> "2. If the three parties reached an agreement of the kind as alleged by Mr. Berezovsky [the alleged 1995 Agreement]:
>
> (1) Was the 1995 Agreement, as alleged in paragraphs C34A and C34B of the Re-Re-Amended Particulars of Claim, a valid "joint activity" or "simple partnership" agreement, or a *sui generis* agreement, under Russian law, which conferred on Mr. Berezovsky and Mr. Patarkatsishvili (a) the right to demand from Mr. Abramovich a distribution of the acquired

ownership interest in Sibneft in the agreed proportion; (b) rights of co-owners in respect of any property directly acquired by Mr. Abramovich as a result of the agreement; and/or (c) the right to demand distribution of profits resulting from the joint activity in the agreed proportion?

(2) Alternatively, was the 1995 Agreement invalid or ineffective under Russian law as alleged in paragraph D34 of the Re-Amended Defence? In particular:

(a) Did the agreement fail to contain all the essential terms for a simple partnership agreement, including in particular the parties' (i) shares in the partnership, (ii) contributions to the partnership and (iii) goal of the partnership?

(b) Was the agreement invalid or ineffective by reason of its having been made orally?

(c) Was the agreement intended to have legal consequences, or to be binding 'in honour only'?

(d) Was any defect in the agreement cured by subsequent performance by the parties?

(e) If and to the extent that any part of the 1995 Agreement was invalid or ineffective, did the balance of the agreement nevertheless constitute a valid and effective agreement?

(f) If the agreement was invalid or ineffective as a partnership agreement, was it nevertheless valid and effective as a *sui generis* agreement under Russian law?

(g) Did the agreement violate Article 434(2) of the 1964 Civil Code?

(h) Were any shares in Sibneft or other interest in Sibneft common property of the partners under the agreement?

(i) Would any claims that Mr. Berezovsky had arising out of the 1995 Agreement have become

time-barred by May or June 2001, leaving him with no rights after that date?

…

4. If the [alleged] 1996 Agreement was made, was it:

(1) A valid agreement, under which Mr. Berezovsky and Mr. Patarkatsishvili acquired or retained valuable rights under Russian law; or

(2) Invalid or ineffective under Russian law as alleged in paragraph D37.2 of the Re-Amended Defence? In particular:

(a) Was the 1996 Agreement invalid or ineffective on the basis that it was an amendment or addition to the 1995 Agreement?

(b) Were the nature and content of the 1996 Agreement such that (i) the parties cannot have intended it to be binding and/or (ii) it lacked sufficient certainty to be regarded under Russian law as a legally binding agreement (as opposed to, at most, one binding in honour only)?

(c) Was the 1996 Agreement invalid or ineffective by reason of its having been made orally?

(d) Was the 1996 Agreement void because it was an attempt to create a trust or other form of split ownership of shares?

(e) Was the 1996 Agreement void as a contract of future gift which was not made in writing?

(f) Would any claims that Mr. Berezovsky had arising out of the 1996 Agreement have become time-barred prior to May or June 2001, leaving him with no rights after that date?"

524. Mr. Abramovich did not pursue his arguments that any claim by Mr. Berezovsky would be time-barred under Russian law by May or June 2001.

525. Expert evidence about Russian law was given:

i) on behalf of Mr. Berezovsky by Ilia Vitalievich Rachkov ("Dr. Rachkov"), a practising Russian attorney and a partner of NOERR, an international law firm;

ii) on behalf of Mr. Abramovich by Mikhail Andreevich Rozenberg ("Mr. Rozenberg"), Senior Partner of the Moscow office of Chadbourne & Parke LLP;

iii) and on behalf of the Family Defendants, by Professor Peter Maggs ("Professor Maggs"), a Professor of Law at the University of Illinois College of Law, specialising in Russian law, the law of the other former Soviet republics, and the law of the former Soviet Union.

Professor Maggs' evidence was not challenged in cross-examination by Mr. Rabinowitz, although this was stated to be on the basis that his evidence was challenged, but that it was unnecessary to cross-examine him, given that the two main experts had been cross-examined on all the main issues raised. All three men were well qualified to give evidence on Russian law.

526. Their joint memorandum on Russian law ("the Joint Memorandum") recorded a very substantial amount of agreement between the experts. Save in certain specified respects, Professor Maggs for the most part agreed with Mr. Rozenberg. By the end of the trial it had become clear, following the giving of evidence by Dr. Rachkov and Mr. Rozenberg, that there were relatively few disagreements between them on relevant matters of legal principle. Where they differed, I tended to find Mr. Rozenberg a more careful and objective witness, who both in his written and in his oral evidence was clear and focused. Dr. Rachkov presented his arguments in a more partisan fashion, and gave the impression at times that he was arguing Mr. Berezovsky's case for him.

The approach of the court

527. It was common ground that it was for the experts to identify the relevant substantive principles of Russian law, and for the court to apply those principles to the facts. At times the experts sought to express their views on the facts of the case. Such views were irrelevant. It was also common ground that where the experts disagreed on the effect of Russian law authorities, the court was entitled, and indeed bound, to look at those authorities to decide the matter for itself. As is stated in Dicey, Morris & Collins at paragraph 9-017:

> "If the evidence of several expert witnesses conflicts as to the effect of foreign sources, the Court is entitled, and indeed bound, to look at those sources in order itself to decide between the conflicting testimony."

528. It was also common ground that Russian law has no concept of trust.

Executive summary of my conclusions in relation to the validity of the alleged 1995 Agreement

529. On the assumption that the alleged 1995 Agreement was made in the terms alleged by Mr. Berezovsky, I conclude that it was invalid or ineffective under Russian law.

Uncertainty of essential terms

530. The first reason for my conclusion is that, even if one assumes that the terms of the alleged 1995 Agreement were as asserted by Mr. Berezovsky, the essential terms of such agreement were not defined with sufficient certainty to satisfy the requirements for a concluded contract as a matter of Russian law.

531. It was common ground that:

i) in Russian law the parties must reach agreement on the essential terms of any contract with sufficient certainty to define the parties' obligations under Article 307 of the 1994 Civil Code of the Russian Federation (the RCC")[258];

ii) the essential terms include (at least) the main obligations undertaken by each party[259]; and

iii) Russian law classifies contracts into different types, and the terms that the law regards as essential will differ according to the type of contract[260]. If the parties do not reach such agreement, then the contract is regarded as non-concluded and ineffective.

532. These terms must be agreed with sufficient precision to enable a court to identify and enforce the relevant obligations[261]. For this purpose the obligation in question must be sufficiently certain to be objectively ascertainable. Professor Maggs' evidence, which was neither contradicted by other experts nor challenged in cross-examination, was that the primary remedy in Russian law for non-performance of a contractual obligation was specific performance, and that the test was accordingly whether or not the obligation in question was agreed in terms sufficiently defined to be specifically enforced[262]. He explained, in this context, that the approach to compensation in the Russian courts would be calculated as the cost of obtaining alternative performance, so that either way you would need to know what the obligations of the parties to a contract actually were.

533. Mr. Rabinowitz submitted that the point in relation to specific performance was irrelevant, since Professor Maggs did not dispute in his reports what was common ground between the other experts, namely that an agreement which was performed without dispute will be a binding contract even if the original agreement was insufficiently certain (so that an order for specific performance of it could not have been obtained at the time the "agreement" had been made). But, contrary to Mr. Rabinowitz's submission, it was not common ground, and was not, in my

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258 Joint Memorandum, paragraphs 18 and 21. See also RCC Article 432, Section 1.
259 Joint Memorandum, paragraph 18.
260 Joint Memorandum, paragraph 18(4).
261 Joint Memorandum, paragraphs 21(1), (4).
262 Maggs 2nd witness statement, paragraph 25(a); Day 37, page 46-47.

judgment, the case, that the alleged 1995 Agreement had been sufficiently performed, either on the part of Mr. Berezovsky or on the part of Mr. Abramovich, so as adequately to define the parties' respective obligations under the alleged 1995 Agreement. The experts agreed that the alleged performance had to enable the court to define the essential term which was otherwise undefined. Thus, it followed that the performance in question had to be clearly referable to their alleged contract. Such alleged "performance" that had taken place (whether one looked at the payments made by Mr. Abramovich, the lobbying activities performed by Mr. Berezovsky, or the role played by Mr. Patarkatsishvili or any other act of alleged part-performance) were none of them sufficiently referable to the alleged Agreements, so as to enable the court to define the essential terms of the agreement.

534. I assume in Mr. Berezovsky's favour (without deciding) that the fact that there was no agreement between the three men as to what shares each of Mr. Berezovsky and Mr. Patarkatsishvili would hold in the common property of the partnership was not fatal to the formation of a concluded agreement.

535. However, apart from that term, in my judgment the parties failed to agree a number of terms which Russian law regarded as essential for a joint activity or partnership agreement:

536. First, in my judgment, the parties failed sufficiently to define the contributions that each of them was to make under the agreement. Neither the pleadings, nor Mr. Berezovsky's evidence, defined Mr. Berezovsky's lobbying obligations, or the other contributions which he, or Mr. Patarkatsishvili, was obliged to make, whether in relation to Sibneft or to "… any future business interests [the participants] acquired, whether or not related to Sibneft" in a manner that was sufficiently certain to satisfy Russian law requirements. Dr. Rachkov acknowledged as much in his cross-examination in relation to Mr. Berezovsky's lobbying obligations[263]. For example, statements to the effect that Mr. Berezovsky would be responsible for "… lobbying for the assets to be included as part of the 'loans-for-shares' programme", that he and Mr. Patarkatsishvili would "raise funds for the project" or that Mr. Patarkatsishvili would "… lead commercial negotiations with key business counterparties" were far too vague to satisfy any requirement of objective ascertainability. Nor, in my judgment, did Russian law provide that, if the contributions were inadequately defined, the alleged 1995 Agreement would nonetheless take effect as a partnership under which the parties would be obliged to make "contributions in reasonable amounts", as Mr. Berezovsky suggested in his Re-re-re-Amended Reply. As Mr. Rozenberg explained, the court is not entitled to make good a failure to comply with the mandatory requirement under RCC Article 432, Section 1 to agree the essential terms of a contract by substituting a term providing for "reasonable amounts" of contributions; Russian court practice is stringent and very consistent in regarding a joint activity agreement as non-concluded if one of the essential terms required by law is missing[264]. The fact that Mr. Berezovsky's alleged contribution obligations were incapable of evaluation supports this conclusion; the court could never have assessed whether such an obligation had been properly performed, nor specifically enforce it, or even assess damages for breach of it.

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263 See Day 34, page 31 *et seq*.

264 Rozenberg 4th witness statement, paragraph 190. See also Rozenberg 4th witness statement, paragraph 71.

537. Second, in my judgment, the parties failed to agree or define a sufficiently certain goal of their alleged partnership or joint activity agreement. Whilst it was common ground between the experts that, as a matter of Russian law:

i) it was an essential term of a partnership contract that the parties must agree to combine their contributions and act jointly in pursuit of a defined common goal; and

ii) the common goal must be sufficiently defined in the agreement to enable a court to know what the subject matter of the agreement is;

there was disagreement between the experts about the degree of precision required. Dr. Rachkov took the view that a sufficient common goal may be simply to "make profit"[265]; Mr. Rozenberg, on the other hand, considered that such a goal was not sufficiently certain[266]. I preferred Mr. Rozenberg's evidence in this respect.

538. It was submitted on behalf of Mr. Abramovich that[267], on Mr. Berezovsky's case, the alleged 1995 Agreement defined the subject matter of the agreement merely as the obtaining of a controlling ownership interest in Sibneft, which did not yet exist. Mr. Sumption submitted that in such circumstances:

i) the alleged agreement did not specify the precise assets Sibneft was intended to obtain, nor did it specify whether the "interest" in Sibneft was to be held in the form of shares or assets or by way of contractual entitlement, and, if the latter, of what nature;

ii) Mr. Berezovsky had conceded in his evidence that "… there had been no focus on which structures controlled by which of us would be used to acquire interests in Sibneft"[268]; and Mr. Abramovich never held or agreed to hold shares in Sibneft in his own name;

iii) but, if the subject matter of the partnership was intended to be shares in holding companies, then the alleged agreement wholly failed to identify what those companies would be, which portion of their shares would be partnership property, and by what means dividends paid by Sibneft were to be distributed through such companies[269];

iv) in addition, it wholly failed to specify or define which profits or revenues, from which of Mr. Abramovich's Trading Companies, were to be regarded as partnership property.

539. Accordingly Mr. Sumption submitted that Mr. Berezovsky's argument[270] that the goal was "to achieve the formation and privatisation of Sibneft, to acquire control of it, and to manage it for profit" did not provide a sufficiently clear "goal" to satisfy the

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265 Rachkov 4th witness statement, paragraph 163.
266 Rozenberg 4th witness statement, paragraph 210.
267 See paragraphs 106-108 of Mr. Abramovich's written closing submissions.
268 Berezovsky 4th witness statement, paragraph 166.
269 See, for example, Day 6, page 81.
270 As suggested in his Written Opening paragraph 1041.

Russian law requirements of certainty. As Dr. Rachkov accepted[271], if Mr. Abramovich had no obligation to buy any shares, and Mr. Berezovsky and Mr. Patarkatsishvili had not agreed anything about contributing to the cost of any share acquisition, the subsequent acquisition of any shares by Mr. Abramovich could not be treated as part of the agreed common goal.

540. Mr. Rabinowitz submitted[272] that this cross-examination was flawed, because the question postulated on the stated hypothesis deprived the answer of any meaning; he said:

> "… if the parties had agreed to jointly acquire a controlling share holding interest in Sibneft the fact that they did not agree that any of them were obliged to contribute money does not mean that any of them could acquire the shares for their own benefit."

He submitted that the agreement was sufficiently clear because it identified the agreed goal of the acquisition of a controlling share holding interest, and that any acquired shares should be held 50/50 for the benefit of Mr. Abramovich on the one hand and Mr. Berezovsky and Mr. Patarkatsishvili on the other. In those circumstances it was absolutely clear from the terms of the agreement that any property acquired pursuant to the identified goal of the joint activity was common property, and, that irrespective of the absence of any obligation imposed on either party to purchase shares or to contribute to the cost of their acquisition, no party was at liberty to acquire shares for their own benefit.

541. I find Mr. Rabinowitz's propositions difficult to accept in the context of a debate about the certainty of terms; how can an agreement be sufficiently certain, or a common goal adequately defined, in circumstances where, even though it is agreed that an asset shall be acquired, or that an attempt should be made to acquire such asset, there are no agreed terms as to either of the respective contracting parties' obligation to acquire such assets at all, or at any particular price, or as to either of the respective contracting parties' obligation to pay for, or contribute to the cost of, such assets' acquisition, when acquired? But, even on the assumption that Mr. Berezovsky's pleading in paragraphs C33 and C34 of the Re-re-re-Amended Particulars of Claim is to be read as an allegation of an agreement between the parties to acquire a controlling share holding interest in Sibneft[273], and an obligation on Mr. Abramovich that, if he did so, at whatever price, he was to be subject to a contractual obligation to hold 50% of such shares for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili (irrespective of any obligation on their part to contribute to the price), even Mr. Berezovsky's more expansive allegations did not suggest that Mr. Abramovich had any <u>obligation</u> to purchase shares in the privatisation auctions in relation to 49% of the share capital of Sibneft. Moreover, on Mr. Berezovsky's case, Russian law would clearly have regarded as an essential term of the alleged 1995 Agreement that he should participate in a wider pool of profits than those merely derived from Sibneft itself. As I have already held, there was no adequate definition as to the nature or extent of such profits.

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271 Rachkov Day 34, pages 54-55.

272 See page 22 of Mr. Berezovsky's First Schedule, paragraph 107.

273 That is, the state's 51% shareholding interest.

542. In all the circumstances I accept the submissions presented on behalf of Mr. Abramovich that the alleged 1995 Agreement did not sufficiently define the essential terms of a simple partnership agreement because:

i) the contributions of the respective parties were not adequately defined; and

ii) because there was no agreed common goal.

Necessity for contributions to be legally valid

543. There was an additional point made on behalf of Mr. Abramovich to support his argument that the necessary constituent elements to support the existence of a joint activity agreement or partnership agreement were not present. The submission was that, as a matter of Russian law, the lobbying services which Mr. Berezovsky had agreed to provide were by their nature, and as a matter of public policy, incapable of being a lawful contribution to a partnership agreement under Russian law and consequently the alleged 1995 Agreement was ineffective on this ground also.

544. Mr. Abramovich's argument was that under Mr. Berezovsky's version of the alleged 1995 Agreement, Mr. Berezovsky was only going to be awarded an entitlement to a shareholding interest in Sibneft and its profits, in the event that his lobbying of President Yeltsin and others in political office was successful. Success in this context meant that the President and government officials accepted Mr. Berezovsky's proposal that, in return for Mr. Berezovsky funding and providing supportive media coverage by ORT, in the run-up to the forthcoming presidential elections, there would be a favourable decision by the former, in relation to the creation and privatisation of Sibneft and the State assets which it acquired. Mr. Sumption submitted that the evidence showed that the law in Russia was that parties may not make a private law agreement under which payment under the contract is contingent upon the favourable decision of a judge or government official.

545. This submission involved consideration of a decision of the Russian Federation Constitutional Court in the case of *Makeyev* as expressed in its Resolution No. 1-P dated 23 January 2007. It was common ground that the Constitutional Court had "… the final word on the meaning and effect of the Constitution" and that its decisions were binding on all Russian courts, including *arbitrazh* courts.[274]

546. The case itself concerned the constitutionality of regulations forbidding lawyers' contingency fees. The Constitutional Court held that the regulations prohibiting contingency fees were constitutional and not in violation of the constitutional right to freedom of contract.

547. That part of the court's decision upon which Mr. Rozenberg principally relied[275], stated as follows:

> "The freedom of contract has also objective limits that are determined by the fundamentals of constitutional order and public policy. In particular, it concerns the inadmissibility of expansion of contractual relations and the principles underlying

274 Rachkov 4th witness statement, paragraph 38.

275 Part of paragraph 2.2.

> them on those areas of social activity that are related to the realisation of the governmental power. Since the governmental authorities and their officials ensure realisation by the people of its power, their activity (both of itself and its results) may not be subject to private civil law regulation, as well as the realisation of civil law rights and obligations may not predetermine specific decisions and actions of the governmental authorities and their officials." [Emphasis supplied]

548. Mr. Sumption submitted that both experts had agreed that the court's statement of principle in *Makeyev* expressly applied to the decisions of all governmental authorities and not just to court officials; in other words, that the public policy in question extended not only to legal fees or to remuneration contingent on the decision of a court, but also to other services and to remuneration contingent on the decision of all "governmental authorities and their officials". He submitted that the object of the rule was identified by both Dr. Rachkov and Mr. Rozenberg as being the prohibition of agreements of a kind which have a potential for corruption, by giving the service-provider an incentive to bribe the decision-maker and the means to share his gains with him; this was an important consideration in a society where, as the expert evidence demonstrated, in the 1990s judicial and administrative corruption was a very real problem; it was a context in which it would make no sense to distinguish between judges and other State officials, and Dr. Rachkov had acknowledged that there was no such distinction[276].

549. In response, Mr. Rabinowitz submitted:

i) This argument was an unpleaded point which Mr. Rozenberg only raised late in the day in his fourth report dated 12 August, 2011, and in relation to which his position continued to develop in cross-examination; it was, however, a thoroughly misconceived point.

ii) Critically, Mr. Rozenberg did not suggest that Mr. Berezovsky made a corrupt deal with President Yeltsin; all he asserted was that lobbying could not be a valid contribution to a partnership contract on public policy grounds, reasoning by analogy from the Constitutional Court decision in *Makeyev*.

iii) While Mr. Rozenberg, in cross-examination, was clear that what was prohibited was a contingent success fee, he accepted that the parties may make an agreement under which one party may be paid a fixed fee for lobbying services.

iv) Mr. Rozenberg also accepted that the Supreme Arbitrazh Court in *Bukhaev/Kitoi* was right to hold – three years after *Makeyev* – that a partnership contract could be upheld where the contribution of one of the partners was to procure governmental permissions to construct a building. Whilst *Bukhaev/Kitoi* would appear to be inconsistent with Mr. Rozenberg's contention that, following *Makeyev*, any agreement that had as its objective the obtaining of some decision from any governmental organ would be unlawful,

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[276] Rachkov 6th witness statement, paragraph 132; cf. Day 34, page 70-1.

Mr. Rozenberg wrongly sought to try and distinguish *Bukhaev/Kitoi* on the basis that the application for governmental approval in that case was, as he sought to suggest, "non discretionary".

v) The difficulty with that approach was that the decision in *Makeyev* plainly applied to all legal success fees, regardless of whether the claim was a straight-forward one over which the Judge had no discretion, or a difficult case in which the Judge could reasonably reach different conclusions. *Makeyev* imposed an absolute prohibition in a limited context, and could not reasonably support by analogy a targeted prohibition in other contexts on contractual entitlements contingent on discretionary governmental decisions in particular.

vi) But the fact was that litigation very frequently involved no judicial discretion at all, but merely the routine application of law to the clear facts of the case, no less than a governmental decision to approve or reject a construction permit. True it may be that the parties may not always be sure of the answer in advance, but that does not make the case discretionary, or mean that the role of the Judge is not simply to identify the law and apply it to the facts. That was especially true of civil law countries such as Russia, which have traditionally tolerated (or acknowledged) much lower levels of judicial discretion than common law countries. And yet the majority decision of the Russian Constitutional Court in *Makeyev* ruled out legal success fees in all litigation, not merely some.

vii) It was not suggested on behalf of Mr. Berezovsky that the rule that Mr. Rozenberg came to advocate was not a possible rule that Russian law-makers could adopt. What was suggested, however, was that Russian law-makers have not adopted such a rule, and that Mr. Rozenberg was inviting this court to make up new Russian law. It would not be appropriate for this court to accede to that invitation.

viii) Although Mr. Rozenberg cited well in excess of 200 judicial decisions in his six reports, he accepted that he had not been able to identify a single case in which the rule in *Makeyev* was applied outside the context of legal services.

ix) A further difficulty for Mr. Rozenberg's rather extreme interpretation of *Makeyev* was that the Presiding Judge in *Makeyev*, Judge Bondar, issued a separate opinion in which he made expressly clear that, in his view, the decision of the majority of the Constitutional Court (in which he participated) was limited to the specific context of contracts for legal services. The conclusion of the Constitutional Court was expressed in clear terms in its concluding resolution at the end of the majority judgment, in the following terms:

> "Based on the above …, the Constitutional Court of the Russian Federation resolved as follows
>
> "1. To recognise that Articles 779.1 and 781.1 of the Civil Code of the Russian Federation as compliant with the Constitution since under the current legal system that regulates relations arising out of the provision of legal

> services they do not allow for awarding contractor claims for payment of compensation under commercial service agreements should such claims be made conditional upon a future decision by the court."

In summary, Mr. Rabinowitz submitted that *Makeyev* was limited to the context of legal success fees, and that Mr. Rozenberg's attempt to apply it by analogy to partnership contracts involving lobbying was misconceived, as was evident from the decision in *Bukhaev/Kitoi* .

x) For his part, Dr. Rachkov accepted in the following passage that *Makeyev* was concerned with corruption and could apply if the lobbying in question involved the characteristic features of the crime of corruption:

> "MR. SUMPTION: Now, let us assume that you have a contract with a politician, okay? The contract says – the politician is a personal friend of the president and of some of the president's closest advisers, let's just assume that, shall we? And assume that a contract is made with that politician under which he agrees to persuade the president and his advisers to issue decrees which will give him and his business associates an opportunity to make large sums of money out of state assets. Now, would you agree that that is a contract with a potential for corruption?
>
> A. I would agree with that.
>
> Q. Would you agree therefore that such a contract is likely to be directly contrary to the principle of public policy identified in *Makeyev*, by the majority?
>
> A. If the -- yes. I mean, if the characteristic features of the crime, corruption, are combined, yes, this is a crime."[277]

Mr. Rabinowitz submitted that this was correct. A partnership contract under which one partner will lobby in a manner which combines the characteristic features of the crime of corruption was of course an unlawful contract which the courts will not enforce. But that approach had no application to the present facts, where there was no basis for any assumption that the arrangement between Mr. Berezovsky and President Yeltsin was corrupt. Once that assumption was disproved (or not established), there was no basis for the public policy against corruption to apply. *Bukhaev/Kitoi* demonstrated that the public policy did not apply simply because there was the potential for corruption (which Mr. Rozenberg accepted was widespread in the construction industry).

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[277] Day 34, pages 85-86.

xi) It followed, therefore, that there was no basis to regard the 1995 Agreement as invalid simply by reason of the fact that the contribution to be made to the partnership by Mr. Berezovsky involved lobbying services.

550. In my judgment it is apparent from a reading of the judgment in *Makeyev*, that the principle therein stated was not limited to the context of legal success fees. That the principle was of general application, and therefore also applied to render invalid fees for services rendered under commercial agreements which were contingent upon the outcome of a decision by a public official, was clear both from the majority decision of the court itself, and from the concurring opinions, in particular that of Judge Gadzhiyev[278]. He said:

> "In particular, what is meant here is that it would be inadmissible to expand contractual relations to apply to the areas of public life that are governed by the power of the state. In this case, using this public law argument the Constitutional Court of the Russian Federation means all civil agreements in their entirety rather than just for-profit agreements for legal services."

551. The same point can be made by reference to the dissenting opinion of another member of the court, Judge Kononov, who read the majority decision in the same way[279]. Mr. Berezovsky's counsel suggested in cross-examination that the concurring opinion of Judge Bondar indicated that the court's decision should be narrowly construed. I do not agree. Judge Bondar's opinion was directed not towards the view (advanced on behalf of Mr. Berezovsky) that the decision was confined to the sphere of lawyers' success fees but, rather, that it did not amount to an absolute prohibition within that sphere: in the sense that it would remain open to the federal legislature, balancing the various public interests involved, to allow lawyers' success fees within prescribed parameters.

552. Originally Dr. Rachkov appeared to argue that the extension of the *Makeyev* principle:

> "… beyond the specific context of legal services contracts (concerning litigation before judges) to lobbying contracts (concerning the lobbying of state officials) would be a matter of debate"[280].

However, in cross-examination, he accepted that, as he himself had stated in paragraph 132 of his sixth report, it was clear that the principle was not so limited[281]. The broad scope of the principle applied was also confirmed by the earlier Information Letter issued by the Presidium of the Supreme Arbitrazh Court, the highest civil law court in Russia whose decisions are binding on all lower courts:

> "At the same time a contractor's claim for payment of remuneration should not be allowed if the claimant bases said claim on a contract term making the payment amount for

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278 See pages 13 and 14 of the judgment.
279 See *ibid* pages 15 and 17.
280 See paragraphs 129 to 131 of his sixth report.
281 See for example Day 34 pages 70 to 72.

services dependent on a judgment by a court or governmental body which is to be arrived at in future." [Emphasis supplied].

553. Moreover contrary to Mr. Rabinowitz's submissions, Mr. Rozenberg's opinion was not that lobbying *per se* could never be a lawful subject matter of an agreement, but merely that lobbying for which the remuneration was contingent on the manner in which an official discretion was exercised was invalid. There was, for example, no difficulty about a professional lobbyist accepting fixed remuneration for his time, trouble or skills[282]. He distinguished the decision in *Bukhaev/Kitoi* on the grounds that the public decision there was a purely formal decision of an administrative nature, as opposed to a discretionary one. But even if this were not an adequate basis for distinguishing *Bukhaev/Kitoi,* the decision in *Makeyev* was, as both experts agreed, binding on all lower courts. It was clear that in the former case there had been no evidence to indicate that the "contract between the parties had been recognised as illegal or invalid or terminated in accordance with due legal process". There was no reference to the *Makeyev* principle and no discussion of the issue thereby raised. Thus, in my judgment, Dr. Rachkov's argument that the *Makeyev* principle should be read narrowly, as otherwise it would rule out all professional lobbying[283], was not a convincing one. Nor was his argument that the principle did not apply to the facts of this case on the basis that the principle had no application to partnerships because partners were not employees and did not provide one another with services for which they hoped to be compensated[284]. As to this point, I accept the submissions advanced in Mr. Abramovich's closing written submissions that the fact that a simple partnership agreement is not a contract for services, does not mean that services may not be provided as a partner's contribution to the common goal. It was common ground that they could be[285], and clear that, on the basis of Mr. Berezovsky's case, they were. It is irrelevant to the mischief of the rule of public policy, whether or not the remuneration arises from a contract for services or a contract under which services are provided, if, in either case, such remuneration is contingent on the favourable decision of a public officer[286].

554. Moreover, I do not accept Mr. Rabinowitz's submission that the *Makeyev* principle had no application to the facts of the present case, on the grounds that "… there was no basis for any assumption that the arrangement between Mr. Berezovsky and President Yeltsin was corrupt". Dr. Rachkov effectively accepted in cross-examination in the passage quoted above[287] that a contract of the kind alleged by Mr. Berezovsky indeed involved the potential for corruption: that was because, under the terms of the alleged 1995 Agreement, Mr. Berezovsky would only be rewarded by receiving a share in Sibneft and "its" profits "for using his political clout in the Kremlin" [288], in the event that a favourable decision was obtained from the State in relation to the creation, grant of management control and privatisation of Sibneft. Moreover Mr. Berezovsky's own evidence made it clear that what he was offering President Yeltsin, in return for such a "favourable" decision, was the media support of

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282 See Rozenberg at Day 36, pages 94-95.
283 Rachkov 6th witness statement, paragraph 133.
284 Rachkov 6th witness statement, paragraph 133.
285 Joint Memorandum, paragraphs 31(6) and (7); Rachkov Day 34, page 22.
286 Rachkov Day 34, page 75.
287 Day 34, pages 85-86.
288 As Mr. Sumption described it at Day 39, page 86.

ORT in the run-up to the presidential election. In such circumstances, the mischief at which the rule of public policy was directed appears to have been directly in point.

555. I conclude, therefore, that the lobbying services which Mr. Berezovsky agreed to provide were not, as a matter of Russian law, capable of being a lawful contribution to a partnership agreement.

Conclusion

556. For the above reasons I conclude that, as a matter of Russian law, the alleged 1995 Agreement would have been held to have been invalid on the basis that it was "*nezakluchenniy*" (non-concluded), i.e. legally non-existent. For reasons which I have already stated I conclude that such difficulties cannot be overcome by any subsequent evidence of "performance".

The absence of a written agreement

557. The next argument presented on Mr. Abramovich's behalf was that the absence of a written agreement precluded Mr. Berezovsky, as a matter of Russian law, from establishing the existence of the alleged 1995 Agreement or its terms. This involved consideration *inter alia* of the interesting question whether Article 161 and/or or Article 162 of the RCC (which impose requirements for contracts to be in written form and address the consequences of failure to do so) should be characterised as procedural or substantive rules as a matter of Russian law. This was an issue that had never been decided by a Russian court. The issue also involved consideration of the questions:

i) whether, if the rules were to be characterised as substantive for the purposes of English private international law, public policy compelled the disapplication of such rules in this court; and

ii) what the consequential effects (if any) were on the validity or enforceability of the alleged agreements in the event that the RCC requirements for written agreements were not complied with.

Having heard all Mr. Berezovsky's evidence in any event, I have to confess to a certain reluctance to engage in the determination of such a hypothetical question. I assume, but do not decide, that the issue should be resolved in Mr. Berezovsky's favour, namely that the absence of a written agreement did not prevent Mr. Berezovsky from establishing the alleged 1995 Agreement in an English court.

Intention to create legal relations

558. A wholly different point, but one which was also connected to the absence of written agreements, was taken by Mr. Abramovich; this was that the alleged 1995 Agreement was not intended to have legal consequences, but was binding in honour only; therefore it was not enforceable as a matter of Russian law because it was merely an arrangement of a non legally-binding nature.

559. The relevant principles of Russian law were common ground between the experts. These were as follows: there was a separate legal requirement that, in order to

establish a contract, the parties must have intended their agreement to be legally binding, rather than merely to be an arrangement or agreement of non-legally-binding nature; Russian law recognised the concept of agreements binding "in honour only"; if the contract was to be a legally binding contract under Russian law, the court had to be satisfied that the parties intended their agreement to have legal effect; the parties' intention was to be ascertained objectively as evidenced by their words and conduct, including their subsequent conduct after the agreement was made, not from their subjective intentions or from what they may have thought but kept to themselves.

560. Thus, it was common ground that the analysis of the objective conduct of the parties, and the identification of their common intention in accordance with the above principles, was a question of fact for the court to determine in respect of which the views of the experts on Russian law were irrelevant.

561. One aspect of the legal principle was in dispute, however; Dr. Rachkov relied on a "presumption" that he alleged existed under Russian law that an agreement between "commercial men" providing for reciprocal benefits and burdens was intended to be legally binding, even if the agreement was oral[289]. Both Mr. Rozenberg and Professor Maggs disagreed with his evidence on this point[290]. I prefer the evidence of the latter two experts to the effect that the matter has to be approached by considering all the circumstances without any presumption either way. Dr. Rachkov's view was unsupported by authority. The only case which he referred to in this context was *Inturist-Ossetia*. That was a case where the Russian court at first instance upheld an oral partnership agreement for the joint construction of a Moscow hotel as a valid and legally binding contract. The court held that:

> "… in view of the trust relationship, a written agreement was not drawn up; there was only a verbal understanding of the terms of the transaction (size and type of contribution, construction procedure, and management of the hotel complex)".

The court stated that the existence of contractual relations was supported by the written evidence. On appeal, the Federal Arbitrazh Court sent the case back to the lower court to consider certain aspects of the facts more closely, including whether the parties directed their will "towards establishment of simple partnership obligations" rather than towards some other kind of contract. The case illustrates how the subsequent conduct of the parties can evidence their agreement and how significant such conduct can be in a Russian court. However as Dr. Rachkov accepted, the decision did not mention or support the existence any such presumption. Nor is the case of any assistance in relation to the facts of this case, or as to the presence in this case of any intention to create legal relations. It merely shows what was common ground between the experts, namely that, notwithstanding that a contract is in oral form, there may be an intention to create legal relations and the court may conclude, whether from prior, contemporaneous or subsequent conduct or from supporting documentation, that there was a binding contract.

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289 Rachkov 4th witness statement, paragraph 76; Rachkov 6th witness statement, paragraphs 68-70.

290 Rozenberg 4th witness statement, paragraphs 59-63; Joint Memorandum paragraph 11(1).

562. In my judgment, even on the assumption that, contrary to my previous conclusion on issue A1, an agreement was concluded in the terms of the alleged 1995 Agreement, an objective evaluation of the parties' intentions, as shown by their conduct, both at the time of, and subsequent to, the alleged 1995 Agreement, demonstrates that, as a matter of Russian law, the parties would be held not to have intended to create legal relations, but rather to have intended that their arrangements should be binding in honour only.

563. My first reason for this conclusion is that which I have already addressed at several places above, namely the extremely vague and general nature of the terms of the alleged 1995 (and indeed 1996) Agreement. Even if, contrary to my earlier conclusion, the essential terms were sufficiently certain to constitute a contract under Russian law, both these so-called essential terms and the further peripheral terms were, nonetheless, for reasons which I have already described above, extremely unclear, not only as to the obligations which the respective parties were to undertake under the alleged agreement, but also as to subject matter, contributions, and goal. For example, in relation to the peripheral terms, it was common ground between the Russian law experts that the alleged term that each of them would have the right to participate in any future business that might be acquired by any of them, in the same proportions[291] (which subsequently metamorphosed in Mr. Berezovsky's fourth witness statement into a right of first refusal in respect of any future business), was ineffective, on the grounds that it was too vague to create a right to participate in future business opportunities[292]. As Dr. Rachkov explained, this was in part because it was not clear what the partners would be required to do in order to acquire or run any future business, or what contribution they would be required to make to either funding or managing the new business[293]. But if, as I must assume for the purposes of this stage of the argument, such term was indeed agreed, its presence is another pointer to the parties' common intention that the whole agreement was intended to be binding in honour only.

564. The second factor which objectively points to the absence of any intention to create legal relations, as a matter of Russian law, is the fact that the alleged 1995 Agreement was made orally. Whilst I accept that such factor is not determinative as to the existence of a binding contract, or as to the presence of an intention to create legal relations, in the circumstances of this case, it is a factor that strongly suggests a common intention that the agreement was to be binding in honour only. As I have already held above, it was almost inconceivable that an agreement on the terms as alleged by Mr. Berezovsky, with its complexities and its far reaching consequences, would not have been concluded in writing, if indeed it had been made, and that, accordingly, was circumstantial evidence strongly supporting Mr. Abramovich's case that no such agreement was concluded. But on the alternative hypothesis that such an agreement was <u>indeed</u> concluded, in the terms alleged by Mr. Berezovsky, the absence of any written agreement, in my judgment, would have been a clear indication of the absence of any common intention that the arrangement should be contractually binding. Irrespective of whether Mr. Berezovsky was aware of the

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291 See paragraph C34(3) of the Particulars of Claim and paragraph 104 of Mr. Berezovsky's witness statement.

292 Rachkov 4th witness statement, paragraph 212; Rozenberg 4th witness statement, paragraph 295; Joint Memorandum, paragraph 70(2); Rachkov Day 35, page 1.

293 Day 35, page 2.

Russian law requirements or the consequences of Article 161 and/or Article 162 of the RCC, the general principle to which Articles 161 and 162 gave effect was that contracts of significance should be concluded in writing[294].

565. Mr. Berezovsky's Russian history expert, Professor Fortescue, confirmed that new entrepreneurs in the early to mid 1990s used forms of protection and resolution of their differences outside the legal or court system, because they did not consider that the Russian legal system was effective to protect their interests. His evidence was that Russian businessmen in the early to mid-1990s, often failed to document their arrangements and that they held various assets in informal arrangements and they made their agreements orally. For example, in his written report he opined as follows:

> "I cannot comment on the legal status of any particular oral agreement made in the 1990s, or of oral agreements under Russian law generally, which are not within my area of expertise. However, my reading about these types of oral arrangements, including the statements of Russian businessmen about these agreements such as the statement of Mr. Potanin set out above, indicates that the parties to such agreements (rightly or wrongly) considered them to be binding. Such oral agreements inevitably involved a high level of trust, because of the difficulties of enforcement of such oral arrangements. However, because of the lack of effective legal protection, the same was true in Russia at the time in relation to written contracts and recorded share ownership, and not just oral agreements."

He said that Russian businessmen at that time adopted an informal rather than a legally documented approach to their arrangements because, amongst other reasons, they did not contemplate that disputes over their arrangements would end up being resolved by the courts, because they weren't confident that the courts would deal with them properly[295]. In re-examination[296], Professor Fortescue was asked whether businessmen regarded informal agreements of that nature, or oral agreements of that nature, as being binding or non-binding, to which (perhaps not surprisingly) he replied "I would expect that they considered them to be binding" . However he did not say whether "binding" meant legally binding or binding in honour only.

566. On the other hand, the evidence of Professor Service and Professor Bean (respectively Mr. Abramovich's and the Family Defendants' Russian history experts) was to contrary effect. Their evidence was that where businessmen did intend their arrangements to be binding and enforceable, whether in a Russian court or abroad, they generally took care to record them in writing[297]. Professor Bean (whom I found to be a useful and articulate witness on this aspect, because, as a partner in the Moscow offices of Coudert Bros, and then Clifford Chance, from 1995 to 2002 he had

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294 Rozenberg 4th witness statement, paragraph 83. Professor Maggs agreed with Mr. Rozenberg on this point: Joint Memorandum, paragraph 11(1).

295 Fortescue Day 37, pages 112-113.

296 Day 37, page 128.

297 See, for example, Bean 1st witness statement, paragraphs 33 and 47.

hands-on relevant experience[298]) described the Russia of the 1990s as an incredibly document-intensive culture[299] and society and explained that:

> "In my opinion, while there were inconsistent laws, incomplete laws, missing laws, and (in the very early 1990s) regulations sometimes only available to bureaucrats, all of which led to uncertainty, it is most assuredly not the case that such uncertainty meant transactions were not documented. On the contrary this meant that, if the parties intended to rely on their agreements or to be able to enforce them, deals were carefully and conservatively documented. As I will set out below, the uncertain state of Russian law often meant (among other reasons) that transactions were structured so as to involve foreign components or structures, but businessmen in Russia in the 1990s were sufficiently sophisticated to understand the need to record clearly the terms of their agreements, to the extent that the arrangements they came to were intended to be legally binding and enforceable. Indeed, during my years of legal practice in Russia I was never asked if an informal oral arrangement was enforceable in court and was never asked to document such an informal oral agreement that had been previously made." [Emphasis in original]

567. He also made the point, in relation to agreements which provided for non-Russian controlling law and dispute resolution, that Russian businessman were concerned to have carefully documented transactions which ensured that "assets were safe from grasping bureaucrats, competitors and most, if not all, taxes". Likewise, Professor Service said in cross-examination, that he had:

> "… never lived in a country where there is so much pressure on one to get documentation for the contingency that an undesirable contingency, an undesirable occurrence might arise from an agreement or an incident that one is involved in[300]."

568. Although the expert historical evidence is necessarily only of limited assistance on this issue, as ultimately one has to look at the particular circumstances of this case in order to assess whether the parties intended to create legal relations, I conclude that it supported my conclusion as to this factor.

569. Third, I accept the submission made on behalf of Mr. Abramovich that the questionable propriety of the services which Mr. Berezovsky was to provide is another factor which makes it highly unlikely that the parties intended that in the event of a dispute their arrangements should be contractually enforceable in a court, as opposed to being settled in some other way. This is another reason why, in my judgment, had any such agreement been made as alleged, then, as a matter of Russian

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298 Notwithstanding the suggestion made in cross-examination on behalf of Mr. Berezovsky to contrary effect.

299 This was supported by Professor Service in cross-examination.

300 Day 38, page 45; see also his observation at Day 38, pages 44 and 48, about the implausibility of transactions involving large sums of money being done through an unrecorded oral agreement.

law, any objective analysis of the intentions of the parties would have been that there had been no intention to create legal relations

Was any defect in the agreement cured by subsequent performance by the parties?

570. I have already dealt with this to a certain extent above. It was pleaded by Mr. Berezovsky that, even if the parties' contributions to the partnership were insufficiently defined when the agreement was made, they became adequately defined subsequently by performance of their obligations under the agreement[301]. Thus, Mr. Rabinowitz submitted:

> "665. It is therefore common ground that, where the parties have performed their contributions without dispute, the contract will be deemed concluded notwithstanding lack of precision in the original agreement as to what the contributions were to be. That is what happened here.
>
> (1) The parties carried out their obligations to contribute to the common effort by undertaking the activities on which they had agreed: lobbying the Government to create and privatise Sibneft, persuading the management of Noyabrskneftegaz and the Omsk Refinery to support the venture, persuading SBS to provide finance, persuading Menatep to support and bid and Sameko to withdraw its competing bid, and arranging the detail of the bid and the acquisition of the shares. All of the parties played their role.
>
> (2) No dispute then arose; and indeed no dispute has arisen today. Mr. Abramovich accepts that Mr. Berezovsky complied with his side of the bargain, and Mr. Berezovsky makes no complaint in relation to the manner in which Mr. Abramovich structured the acquisition and managed Sibneft.
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> 666. The consequence is that the arguments raised by Mr. Rozenberg about the precision with which the agreement must identify the parties' contributions – the need to agree on the amount or value of contributions and the order, timing and process of their making – are all superfluous, since the parties performed their agreed roles without dispute."

571. It was common ground between the Russian legal experts that where it could be demonstrated that a contract had been fully performed, documentary evidence of its performance may be taken into account when assessing whether the contract was

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[301] Re-re-re-Amended Reply, paragraph 34.1(2)(c).

concluded or not[302]. The performance of the contract may also shed light on the content of the parties' original agreement in accordance with Article 431[303]. They also agreed that, at a minimum:

i) The principle can apply only if, during the performance in question, neither party has asserted that the performance required by the agreement was unclear or too vague[304]. It is necessary, at the very least, that the performance occurs without dispute.

ii) The principle can only apply if the performance makes it possible to define the essential term which was otherwise undefined[305]. As Dr. Rachkov said in cross-examination, in answer to the following question:

> "Q. Would you agree that the subsequent conduct has got to be unambiguous? It's got to be conduct which points to a particular term having been agreed and nothing else?
>
> A. Yes, the subsequent conduct must identify the essential term which was not agreed upon initially."

572. There was a dispute in closing submissions as to the extent to which it was necessary that the subsequent performance should point unambiguously to the parties having agreed a particular term[306]. However what in my judgment was clear was that both experts agreed that the alleged performance must enable the court to define the essential term which was otherwise undefined and that accordingly the performance was clearly referable to the alleged contract.

573. I accept Mr. Abramovich's contention that nothing in the parties' subsequent conduct established the agreed shares, contributions or other essential terms of the alleged 1995 Agreement. As was submitted on his behalf, and as I hold:

i) The payments made by Mr. Abramovich to Mr. Berezovsky were not from Sibneft and bore no relationship to Sibneft's profits or dividends. Nor was it possible to identify the wider profit or revenue pool to which Mr. Berezovsky claimed that he and Mr. Patarkatsishvili had a 50% entitlement. The payment of monies by Mr. Abramovich to Mr. Berezovsky did not therefore allow the court to reach any conclusion as to either the fact or the terms of the alleged agreement. Accordingly it could not be demonstrated that such payments were referable to the alleged 1995 Agreement.

ii) The subsequent activities of the parties did not establish what they were obliged by the alleged 1995 Agreement to do. They did not demonstrate that they were clearly referable to the terms of the alleged agreement. The

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302 Rachkov 4th witness statement, paragraph 115; Rozenberg 4th witness statement, paragraph 126; Joint Memorandum, paragraphs 24 and 73.

303 Rozenberg 4th witness statement, paragraph 129; Rachkov Day 34, pages 126-127.

304 Rozenberg 4th witness statement, paragraph 130(c); Joint Memorandum, paragraph 25(1).

305 Rozenberg 4th witness statement, paragraph 130(d); Joint Memorandum, paragraph 25(2); Rachkov Day 34, page 131.

306 Rachkov Day 34, pages 133-134. See page 159 of Mr. Berezovsky's Second Schedule.

activities allegedly engaged in by Mr. Berezovsky remained vague and generalised, even after the court had heard all the evidence. The role of Mr. Patarkatsishvili likewise remained unclear. Nor did the parties' subsequent activities permit the evaluation of those contributions, such as to ascribe to the services allegedly provided by either of them a monetary value.

iii) Perhaps most importantly, the alleged "performance" was at least equally, and, in fact, as I find, more consistent with a *krysha* arrangement.

iv) It was not possible to assess which so-called contributions were provided before the agreement was concluded, and which were provided after the agreement was concluded and pursuant to the alleged agreement.

v) The mere fact that Mr. Abramovich acquired interests in Sibneft did not advance the argument, since it did not demonstrate that he did so pursuant to any agreement of the kind alleged by Mr. Berezovsky.

vi) None of the parties ever sought to obtain common registration over shares that were said to be held in common property, as would have been necessary for the shares to constitute common property. Indeed, no shares in Sibneft were ever held by any of the parties to the alleged agreement at any material time; and no shares in Sibneft or any Sibneft holding companies were ever contributed by the parties to the joint activity or acquired by the parties as a result of the joint activity.

vii) Thus, Dr. Rachkov's statement, that the alleged 1995 Agreement "appears to have been performed without dispute"[307] was unjustified. His reliance on the absence of "complaint"[308], was a circular argument. A party is unlikely to complain if it does not believe itself to be performing a binding agreement at all.

574. Accordingly I conclude that the defects in the formation of the agreement were not saved by any subsequent performance of the parties.

If the agreement was invalid or ineffective as a partnership agreement, was it nevertheless valid and effective as a sui generis agreement under Russian law

575. The experts agreed that if an agreement which was intended to be (and only to be) a partnership contract (as defined in Article 122 of the Fundamentals and in Article 1041) was not a concluded partnership contract because the parties did not reach agreement on all essential terms for such a contract, then it could not be treated as valid as a *sui generis* contract.[309] Under the legislation governing partnerships (which will be applied by analogy in accordance with RCC Article 6), such an agreement will still be non-concluded[310]. However, Dr. Rachkov argued that, on analysis of the parties' agreement, it might be that what the parties had done was to make an agreement that did not contain the essential characteristics of a partnership contract as

307 Rachkov 4th witness statement, paragraph 229.
308 Rachkov 4th witness statement, paragraph 225.
309 See the Joint Memorandum, paragraph 62(3).
310 Rachkov 4th witness statement, paragraph 253; Rozenberg 4th witness statement, paragraph 225; Joint Memorandum, paragraph 62(3); Rachkov Day 34, pages 137-138.

defined in the applicable laws, but, in that event, it might be that the agreement they had made might be a concluded and valid contract of some other kind[311].

576. If this was indeed the case as a matter of law, then it is difficult to see how this supposed principle could operate without subverting the principle summarised in the preceding paragraph on which both experts were agreed[312]. The alleged 1995 Agreement, which, on Mr. Berezovsky's primary case, was a partnership agreement, sufficiently resembled one for it to be subject by analogy (see RCC Article 6(1)), to the statutory requirements applicable to partnership agreements.

577. However, it was not necessary for me to resolve this question. As Dr. Rachkov accepted, for an agreement to be a valid *sui generis* agreement, an agreement must have sufficient certainty to enable a court to enforce it[313]. Thus, even on the assumption that the alleged 1995 Agreement could be construed as a putative *sui generis* agreement, it would fail for lack of certainty for the same reasons as the alleged joint activity agreement on the same terms.

Remaining Russian law questions in relation to the alleged 1995 Agreement

578. It was not useful or necessary for me to decide any of the remaining questions of Russian law in relation to the alleged 1995 Agreement. I thus do not decide the issues whether: the alleged 1995 Agreement violated Article 434(2) of the 1964 Civil Code; or whether any shares in Sibneft or other interest in Sibneft could constitute common property of the partners under the alleged agreement.

Executive summary of my conclusions in relation to the validity of the alleged 1996 Agreement

579. On the assumption that the alleged 1996 Agreement was made in the terms alleged by Mr. Berezovsky, I conclude that it was invalid or ineffective under Russian law for similar reasons to those which I have given in relation to the alleged 1995 Agreement. It was also invalid for additional reasons. I deal with this topic very shortly.

580. First, if the alleged 1995 Agreement was invalid or ineffective as a matter of Russian law, then in my judgment the alleged 1996 Agreement cannot survive either. The whole foundation of the alleged 1996 Agreement was that its subject matter had been acquired pursuant to the alleged 1995 Agreement. If the latter was ineffective, then there can be no subject matter for the purposes of the former. Moreover the terms of the alleged 1996 Agreement, on the assumption that it was made, were no more certain than its predecessor. For similar reasons it would be regarded under Russian law as non-concluded on the grounds of want of certainty, and in addition not legally binding because of the absence of any objective intention to create legal relations.

581. Additionally I conclude that, because the object and the substance of the alleged 1996 Agreement was purportedly to split the "legal" and "beneficial" or economic interests in Sibneft shares, such that Mr. Berezovsky and Mr. Patarkatsishvili would continue on an indefinite basis to receive dividends and the right to demand transfer of those

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311 Rachkov 4th witness statement, paragraph 254. See also his comment in the Joint Memorandum, paragraph 77(1) to similar effect.

312 Rachkov 4th witness statement, paragraph 253.

313 Day 34, page 138.

shares, but would not be the owners of the shares, it was contrary to the mandatory provisions of Russian law and consequently void[314].

582. It was common ground between the experts that Russian law did not recognise the concept of a trust as understood in English law, whereby parties may agree the property is to be legally owned by one person but "beneficially" owned by another person[315]. It was also agreed that Russian law does not permit the parties to agree to split ownership by separating "legal" and "beneficial" ownership, or by creating ownership rights not provided for by the civil code or other legislation.

583. In relation to this issue, it is important to note that the pleaded allegation in paragraph C 37 of the Re-re-re-Amended Particulars of Claim was specifically that the parties would arrange matters so that Mr. Abramovich or his companies were the legal owner of the Sibneft shares; that Mr. Berezovsky and Mr. Patarkatsishvili would continue to have the rights and interests pursuant to the alleged 1995 Agreement in the shares that would be held by Mr. Abramovich; i.e. that any ownership interests acquired would be held 50% for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili[316]; and that he would upon request transfer Sibneft shares to them "equivalent to their interest in Sibneft". In addition, Mr. Berezovsky's evidence was that Mr. Abramovich agreed, in terms, to hold the shares for him as "*benefitsiary*"[317].

584. However Mr. Rabinowitz submitted that, on the basis of Dr. Rachkov's evidence, the prohibition on split ownership was not infringed by the terms of the alleged 1996 Agreement and that Mr. Abramovich's arguments in this respect were misconceived, for the following reasons:

> "(1) First, as noted, it is common ground that, at the time when the 1996 Agreement is said to have been made, silent partnerships were expressly permitted and recognised in Article 1054 of the Civil Code. Thus, the Code contemplates that the registered owner of Russian land or property may owe personal obligations to a silent partner.
>
> (2) Second, for reasons which have already been explained, it is submitted that the prohibition on split ownership does not in fact prohibit contracts to allocate the benefit of ownership, which create personal contractual rights rather than *in rem* rights. The rule against split ownership does not prohibit those personal contractual rights.
>
> (3) Third … [not relevant for present purposes]

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314 Rozenberg 4th witness statement, paragraphs 384-386, read with paragraphs 241-253 and 266.

315 See paragraph 63 of the Joint Memorandum.

316 See paragraph C 34 of the Re-re-re- Amended Particulars of Claim.

317 Berezovsky 4th witness statement, paragraph 169. See also Mr. Berezovsky's oral evidence at Day 5, page 127: "We transfer under Roman control, under Roman -- we will use trust, even here we use trust, because at that time I didn't understand what mean "trust" – but under Roman control all our shares".

(4) Fourth, and in any event, it is common ground that Mr. Abramovich never in fact owned Russian shares in Sibneft. What he owned were beneficial entitlements under a Liechtenstein and then a Cypriot trust, to which he (or his, if not partner, then minion, Mr. Shvidler) had the power to add Mr. Berezovsky as beneficiary.

(5) Mr. Sumption contemplated [in cross-examination of Dr. Rachkov] during the trial that there could be a trust of foreign property without infringing the prohibition on split ownership:

'Q. I quite understand your point, that it's perfectly possible in Russian law to have a trust of a non-Russian asset, a share in a BVI company, for example.'

(6) Dr. Rachkov was in fact making a different point at the time, and he did not comment on Mr. Sumption's suggestion. The suggestion is, however, instructive: the fact is that what Mr. Abramovich acquired by reason of the joint activity, and what is therefore common property in accordance with the default rule, are beneficial entitlements under Liechtenstein and then Cypriot trusts."

585. I do not accept these arguments. First, the suggestion that, if common property were maintained in the shares, the alleged 1996 Agreement would not be objectionable, did not address the actual alleged terms of the agreement, both as pleaded and as described in Mr. Berezovsky's evidence. The alleged 1996 Agreement was not an agreement to hold property in common but rather an agreement that ownership should be vested in Mr. Abramovich or his companies alone, for the benefit of Mr. Berezovsky and Mr. Patarkatsishvili, and that rights in those shares should be split into what an English equity lawyer would call legal and beneficial title. In other words, Mr. Berezovsky's case was clearly an assertion based on the concept of trust, which the experts agreed does not exist in Russian law, but described in another way.

586. Second, the alternative submission that the agreement was merely one which created personal contractual rights rather than *in rem* rights, based on Dr. Rachkov's view that it would have been permissible for Mr. Abramovich, as "the one and only owner of the rights in relation to Sibneft", who had "contractually agreed to allocate some of the benefits of those rights" to Mr. Berezovsky[318], again does not address the substance of the agreement alleged by Mr. Berezovsky. It is impossible, in my judgment, to characterise the alleged 1996 Agreement, as pleaded and as described in Mr. Berezovsky's evidence, as merely a personal contractual agreement by Mr. Abramovich to dispose of the fruits of <u>his</u> (i.e. Mr. Abramovich's) rights in Sibneft shares. On the contrary, the alleged agreement provides for Mr. Abramovich to hold any Sibneft ownership interests, immediately as and when acquired, 50% <u>for</u>

[318] Rachkov 4th witness statement, paragraph 271 See also Rachkov comments in Joint Memorandum paragraph 85(2).

the benefit of Mr. Berezovsky and Mr. Patarkatsishvili and, upon request, to transfer Sibneft shares to them "equivalent to their interest in Sibneft". This would in substance have amounted to a contractual agreement to a split ownership arrangement, which Dr. Rachkov agreed was not permissible. The obligation alleged in C36(3) of the Particulars of Claim to transfer the shares on demand would have made Mr. Abramovich in reality a mere trustee or temporary possessor of the shares, inconsistent with an owner's right of disposal of his assets. Indeed, Dr. Rachkov himself stated that:

> "As between the parties, however, the contractual rights that Mr. Berezovsky would have against Mr. Abramovich would be effectively equivalent to property rights[319]."

587. Third, nor can I accept the fourth, fifth and sixth submissions made by Mr. Rabinowitz, as quoted above. These were to the effect that:

i) the relevant property owned by Mr. Abramovich was a beneficial entitlement under a Liechtenstein, and then a Cypriot trust, to which he (or his, if not partner, then "minion", Mr. Shvidler) had the power to add Mr. Berezovsky as beneficiary;

ii) that there could be a trust of foreign property without infringing the prohibition on split ownership; and

iii) that, accordingly, the common partnership property in accordance with "the default rule", or the property held on trust (or rather sub-trust) by Mr. Abramovich for Mr. Berezovsky and Mr. Patarkatsishvili was Mr. Abramovich's beneficial entitlement under Liechtenstein and then Cypriot trusts.

This analysis has an air of total unreality about it. Mr. Berezovsky had never pleaded or previously suggested that he, and Mr. Patarkatsishvili, had any sort of claim against Mr. Abramovich, whether personal or proprietary, to participate in, or to have transferred to them, property held in, or rights conferred by, Liechtenstein or Cypriot trusts. Mr. Berezovsky's claim has always been that his Russian law rights arise in relation to an ownership interest in Sibneft shares. Even the assertion made in his fourth witness statement that the alleged 1995 and 1996 Agreements extended to a right of participation in the extended pool of profits made by Mr. Abramovich's Trading Companies, as a result of his acquisition of control of Sibneft, never suggested any entitlement to Liechtenstein or Cypriot trust property, or to a 50% interest in Mr. Abramovich's beneficial entitlement under such trusts. Such an argument is wholly inconsistent with the manner in which Mr. Berezovsky's claim has been formulated to date, namely as an entitlement to an interest in Sibneft shares, whether contractual or proprietary, and the participation in the profits directly or indirectly derived from Sibneft.

588. Accordingly, on this ground also I conclude that the alleged 1996 Agreement, if indeed it was concluded, was contrary to Russian law, and void.

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[319] Rachkov 4th witness statement paragraph 265.

589. I do not need to deal with the other Russian law arguments in relation to the alleged 1996 Agreement.

Conclusion in respect of the alleged 1996 Agreement

590. Accordingly I conclude that if, contrary to my primary conclusion, an agreement was concluded in the terms of the alleged 1996 Agreement, it was invalid, ineffective and void as a matter of Russian law.

Section X - Issue A3: The ORT intimidation issue

Introduction

ORT

591. The issue addressed in this Section of the judgment is Issue 6, as set out in the Agreed List of Issues, namely:

> "Did Mr. Berezovsky and Mr. Patarkatsishvili agree to sell their interests in ORT to Mr. Abramovich following threats communicated by Mr. Abramovich and delivered by him on behalf of the Russian State authorities?
>
> (1) Were any of Mr. Abramovich's statements in the course of the meeting between himself, Mr. Berezovsky and Mr. Patarkatsishvili at Le Bourget airport in France on 6 December 2000 of an intimidatory nature?
>
> (2) Was there a meeting between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in Cap d'Antibes in December 2000 at which Mr. Abramovich communicated any such threats?"

For the sake of brevity I shall refer to this topic as the "ORT intimidation issue".

592. Although the ORT intimidation issue was a satellite issue, it assumed a considerable importance in the evidence and in the parties' submissions, because of the reliance parties placed upon it in relation to the determination of the critical issues in the case[320].

593. Mr. Berezovsky's pleaded case in relation to the ORT intimidation issue was as follows:

> "C26. By the end of 2000, Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich had significant business interests together (as further described below). Mr. Berezovsky and

[320] For example, Mr. Berezovsky's written closing submissions devoted over 100 pages to the ORT intimidation issue, and Mr. Abramovich's 46 pages. Days of court time were also spent on the oral evidence relating to this issue.

Mr. Patarkatsishvili knew that Mr. Abramovich was close to President Putin and part of his regime.

C27. Soon after Mr. Glushkov's arrest, in December 2000, Mr. Abramovich met Mr. Berezovsky and Mr. Patarkatsishvili at Mr. Berezovsky's home in Cap d'Antibes, France. At this meeting, Mr. Abramovich told Mr. Berezovsky and Mr. Patarkatsishvili that:

(1) he had come on the orders of President Putin and Mr. Voloshin;

(2) Mr. Berezovsky and Mr. Patarkatsishvili had to sell their interests in ORT immediately (those interests being held through their joint 100% shareholding in ORT-KB and their holding in Logovaz);

(3) if Mr. Berezovsky and Mr. Patarkatsishvili sold their interests in ORT, Mr. Glushkov would be released from prison;

(4) if Mr. Berezovsky and Mr. Patarkatsishvili refused to sell their interests in ORT, (a) Mr. Glushkov would remain in prison for a very long time, and (b) President Putin would seize their ORT interests; and

(5) the price Mr. Berezovsky and Mr. Patarkatsishvili would be paid for their interests in ORT was $175 million.

C28. In the absence of Mr. Berezovsky from Russia, the Russian state could not detain him as it had detained Mr. Gusinsky. Instead, operating through Mr. Abramovich and otherwise in the manner pleaded above, it used the detention of Mr. Glushkov and the other threats referred to above to exert pressure on Mr. Berezovsky to sell his interest in ORT.

C29. As a result, Mr. Berezovsky and Mr. Patarkatsishvili had no option but to accept the significantly reduced sum of $175 million for ORT.

C30. Despite Mr. Berezovsky's and Mr. Patarkatsishvili's surrender of ORT, Mr. Glushkov was not released.

C31. The ORT transaction presaged the modus operandi for the Sibneft transaction."

594. Mr. Berezovsky did not claim any relief in relation to the sale of his interests in ORT, although his original letter before action threatened such a claim. The evidence about this sale was relevant for the following reasons:

i) Mr. Berezovsky contended that the alleged threats made to him by Mr. Abramovich in relation to the sale of the former's interest in ORT were part of "a course of conduct of explicit and implicit coercive threats and intimidation", which induced Mr. Berezovsky to sell his interest in Sibneft at an undervalue, because the threats in relation to ORT were, in effect, "inextricably intertwined" with what is alleged to have occurred in relation to Sibneft[321]. Mr. Abramovich's alleged involvement in the Russian government's threats in relation to ORT was said by Mr. Berezovsky to explain why Mr. Abramovich's statements about Sibneft were to be treated as implied threats[322]. In other words, the evidence in relation to the ORT intimidation issue was relied upon, as part of Mr. Berezovsky's case that he had been induced by Mr. Abramovich's unlawful threats to part with his Sibneft interest.

ii) The factual issues relating to ORT, in particular Mr. Berezovsky's allegations about an alleged meeting in Cap d'Antibes, which is said to have taken place on 7 or 8 December 2000 also went to the credibility of Mr. Berezovsky's evidence, and that of Mr. Abramovich, as a whole.

iii) According to Mr. Berezovsky's case, the breakdown in the friendship between Mr. Abramovich and Mr. Berezovsky came about as a result of Mr. Abramovich's conduct in relation to the sale of Mr. Berezovsky's interest in ORT, at the alleged Cap d'Antibes meeting. Mr. Abramovich was said by Mr. Berezovsky to have had no explanation for the breakdown in the friendship, which Mr. Berezovsky submitted not only adversely reflected on Mr. Abramovich's credibility, but also supported Mr. Berezovsky's case in relation to the alleged 1995 and 1996 Agreements and the Sibneft intimidation issue.

Summary of Mr. Berezovsky's allegations in relation to the ORT intimidation issue

595. Mr. Berezovsky's case in relation to the ORT intimidation issue had two separate limbs to it:

i) First, he alleged that, at a meeting in late August 2000, threats were made directly to him by Mr. Voloshin, President Putin's then Chief of Staff and Head of Russia's Presidential Executive Office ("Mr. Voloshin"); and further threats were thereafter made by President Putin himself, both directly to Mr. Berezovsky at a meeting also attended by Mr. Voloshin, and separately to Mr. Patarkatsishvili[323]. The substance of the threats was said to have been that, unless Mr. Berezovsky surrendered his shares in ORT to the Russian

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321 Re-re-re-Amended Particulars of Claim, paragraph C51(1).

322 Mr. Berezovsky's case was that the alleged threats in relation to ORT were "… part of an ongoing course of threatening conduct" which together with the independent intimidatory threats at paragraphs C51(3) and C51(4) of the Re-re-re-Amended Particulars of Claim constituted the tort of intimidation: Re-re-re-Amended Particulars of Claim, paragraph C51A.

323 Re-re-re-Amended Particulars of Claim, paragraphs C17-C21.

State (or to an entity acceptable to it), Mr. Berezovsky would be imprisoned like Mr. Gusinsky had been. Mr. Berezovsky did not suggest that Mr. Abramovich was in any way involved in the making of these alleged threats.

ii) Secondly, Mr. Berezovsky alleged that Mr. Abramovich visited him at his house in Cap d'Antibes in December 2000, after Mr. Glushkov had been arrested. According to Mr. Berezovsky, Mr. Abramovich told Mr. Berezovsky that "… he had come on the orders of President Putin and Mr. Voloshin; that Mr. Berezovsky and Mr. Patarkatsishvili had to sell their interests in ORT immediately; that if they did so, Mr. Glushkov would be released from prison; and that, if they refused to do so, Mr. Glushkov "… would remain in prison for a very long time" and "President Putin would seize their ORT interests"[324]. By the time of closing submissions, the date of this meeting at Cap d'Antibes was said by Mr. Berezovsky to have taken place between 7 and 9 December 2000.

596. Mr. Berezovsky's case was: that no decision was made by him, even in principle, to sell the stake in ORT, until Mr. Glushkov was arrested on 7 December 2000; and that he made the final decision to do so at the alleged meeting with Mr. Abramovich at Cap d'Antibes in December 2000[325]. This was a critical element of his case in relation to the alleged ORT intimidation. Mr. Berezovsky's fourth witness statement said that after Mr. Abramovich had allegedly made the threats at the meeting:

> "[o]n this basis, and this basis alone, I agreed to sell my interest in ORT"[326]:

In his oral evidence, Mr. Berezovsky acknowledged that he knew that Mr. Patarkatsishvili had started discussions with Mr. Abramovich about the sale of his ORT stake before December 2000, and that he had discussed that matter with Mr. Patarkatsishvili[327]. His position appeared to be that he disagreed with Mr. Patarkatsishvili's approach, and that, although those negotiations were ongoing, he would not have agreed to sell but for the arrest of Mr. Glushkov, at which point he announced in interviews to the mass media that he was not going to go ahead with proposed arrangements for transferring the ORT shares into an independent management trust and "that I don't have choice[328]."

Summary of Mr. Abramovich's case in relation to the ORT intimidation issue

597. Mr. Abramovich's evidence, on the other hand, was that it had not been his idea, or wish, ever to buy Mr. Berezovsky's or Mr. Patarkatsishvili's shares in ORT; and that Mr. Patarkatsishvili had first raised the idea of selling the ORT shares to him in around mid-October 2000. Initially he had resisted, because shares in a media organ was of absolutely no interest to him as he was well-known for having little interest in the media, and owning shares in ORT was not a business decision in which he would ever have been interested on its own merits. Although initially resistant to the idea,

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324 Re-re-re-Amended Particulars of Claim, paragraphs C26-C31.
325 Berezovsky Day 6, pages 161-162.
326 Berezovsky 4th witness statement, paragraph 361.
327 Berezovsky Day 7, page 30.
328 Berezovsky Day 6, pages 152-153; Day 6, page 153.

he had agreed in principle with Mr. Patarkatsishvili to buy the ORT stake for $100 million. His evidence was that he then met with Mr. Voloshin to discuss the purchase because, if Mr. Voloshin had indicated that he was against the sale, it would not have gone ahead. He also discussed the matter with President Putin[329]. Thereafter Mr. Patarkatsishvili had subsequently reported to Mr. Abramovich, at a meeting in November 2000 at Mr. Abramovich's office at Sibneft in Moscow, that Mr. Berezovsky was reluctant to sell but could be persuaded to do so if the price was increased to $150 million. Mr. Abramovich said he agreed to pay this increased price. His oral evidence was that this agreement was concluded some time about 6 November 2000 but that he could not be precise about the chronology. His evidence was that, at about this time, Mr. Patarkatsishvili had also asked Mr. Abramovich to think about the "official" version of why Mr. Berezovsky was selling his shares in ORT, since the latter had claimed on prior occasions that he would not sell or would turn the shares over to reporters and the intelligentsia to be managed. Mr. Abramovich also said that it was probable that he discussed the possible sale of ORT shares directly with Mr. Berezovsky at a meeting in Cap d' Antibes around 6 November 2000, when he went to visit Mr. Berezovsky, which was the first time he had seen Mr. Berezovsky after he had left Russia, although he did not recall the details of what was discussed at the meeting. However Mr. Abramovich was sure that they parted on good terms; and he certainly made no threats of any kind.

598. Mr. Abramovich also maintained that President Putin was not interested in acquiring Mr. Berezovsky's 49% shareholding; what President Putin was concerned to ensure was that Mr. Berezovsky and Mr. Patarkatsishvili should "… leave management of the company and relinquish control, stop influencing the content of the programmes" [330]. He pointed out that what was important was the broadcasting licence, rather than the shares, as it would have been easy for the licence to have been taken away from ORT and given to another organisation.

Executive summary of my conclusion in relation to the ORT intimidation issue

599. I hold that Mr. Berezovsky has not established, on the balance of probabilities, either:

i) that a threat was made to him personally by President Putin and/or by Mr. Voloshin that, unless Mr. Berezovsky surrendered his shares in ORT to the Russian State (or to an entity acceptable to it), Mr. Berezovsky would be imprisoned in the same way as Mr. Gusinsky had been; or

ii) that there was a meeting between Mr. Abramovich and Mr. Berezovsky at Cap d'Antibes on 7, 8 or 9 December 2000 at which Mr. Abramovich told Mr. Berezovsky that "he had come on the orders of President Putin and Mr. Voloshin"; that Mr. Berezovsky and Mr. Patarkatsishvili had to sell their interests in ORT immediately; that if they did so, Mr. Glushkov would be released from prison; and that, if they refused to do so, Mr. Glushkov "… would remain in prison for a very long time" and "President Putin would seize their ORT interests"; or

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329 Abramovich Day 22, page 82.

330 Abramovich Day 22, pages 82-83.

iii) that Mr. Berezovsky only decided to sell his stake in ORT because of threats made by Mr. Abramovich.

600. I accept Mr. Voloshin's evidence that no such threats were made, either by him or President Putin. I likewise accept Mr. Abramovich's evidence that no such threats were made by him.

Relevant facts in relation to the ORT intimidation issue

601. The following is a brief summary of the relevant facts in relation to the ORT intimidation issue, either as found by me on the evidence or as was common ground between the parties. In making my findings of fact in relation to this satellite issue, I have taken into account the numerous evidential and other points made in the respective written and oral submissions of the parties. It is not feasible to refer to them all.

602. As early as 4 July 2000, Mr. Berezovsky was reported as saying that he was "seriously thinking" about returning back to the State his stake in ORT unless the State started to fund ORT. Mr. Berezovsky had said that he did not want to spend any more money on the television station.

603. By mid- to late-2000 Mr. Berezovsky's influence was no longer at its zenith. Mr. Voloshin described it in these terms in his written evidence[331]:

> "Mr. Berezovsky says (Berezovsky 4, paragraph 241) that his own relations with the Yeltsin regime became weaker in the period from 1998-2000 and that he only discussed important political matters and met people including me when he wished to communicate his views to President Yeltsin. Since I was working in the Presidential Administration at that time I can agree with Mr. Berezovsky and confirm that his influence was not so great at that time. What Mr. Berezovsky did have was the ability to achieve indirect influence through his contacts with those around Mr. Yeltsin, but it is true that this ability had also diminished somewhat by 2000."

604. As I have already described, Mr. Gusinsky was arrested on 13 June 2000 and remained in custody until 16 June 2000. According to the facts as described in the decision of the European Court of Human Rights[332], during his detention, Mr. Lesin, the Acting Minister for Press and Mass Communications, offered to drop the criminal charges against Mr. Gusinsky, if he sold Media Most, which owned the television network NTV, to Gazprom, at a price to be determined by Gazprom. The agreement between Gazprom and Mr. Gusinsky was signed on 20 July 2000. It included conditions in Annex 6 relating to the termination of the criminal prosecution against Mr. Gusinsky and guarantees of his right to leave the Russian Federation. After signature of the agreement, the criminal prosecution against Mr. Gusinsky was stopped, and Mr. Gusinsky was permitted to leave Russia. Mr. Gusinsky left Russia

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331 Voloshin 2nd witness statement, paragraph 24.

332 *Gusinsky v Russia* [2004] ECHR 70276/01. The facts as found by the ECHR were not disputed by the Russian Government.

on 26 July 2000. The arrest of Mr. Gusinsky and his dispute with the Russian government was very widely publicised in June, July and August 2000. The terms of Annex 6 itself were widely known in Russia by late September 2000.

605. On 17 July 2000, Mr. Berezovsky resigned from the Duma, stating that he did not wish to be involved in the restoration of an authoritarian regime. In so doing, he gave up the immunity from prosecution which came with his seat in the Duma.

606. On 12 August 2000, the submarine *Kursk* sank. Programmes on both the ORT and NTV channels were highly critical of President Putin's response to the tragedy. Various newspapers reported that, on 22 August 2000, during a meeting with grieving relatives of the submariners who died aboard the *Kursk*, President Putin said:

> "They are liars. The television people who have been destroying the state for 10 years. They have been thieving money and buying up absolutely everything .... Now they're trying to discredit the country so that the army gets even worse."

607. On 24 August 2000, the *Financial Times* contained the following report about the incident:

> "**World News: Putin hits at media 'Oligarchs' over Kursk Tragedy**
>
> President Vladimir Putin of Russia yesterday lashed out at individuals he claimed had attempted to make political capital out of the *Kursk* submarine tragedy, in a thinly veiled attack on some of the country's influential business 'oligarchs'.
>
> On a day of national mourning for the 188 crew members of the *Kursk*, which sank in the Barents Sea, Mr. Putin said he had 'a great feeling of responsibility and guilt' for the tragedy.
>
> But, in a clear attempt to deflect strong criticism of his handling of the crisis, he rounded on the oligarchs who control much of the media that led the criticism of him.
>
> His attack may herald the start of a new round in the fight between the administration and the small group of men who became so rich and powerful during the 1990s under former President Boris Yeltsin.
>
> In remarks broadcast on the state-controlled RTR channel last night, Mr. Putin said that the first to defend the *Kursk's* crew and their families over the last few days were the same who had 'long promoted the destruction of the army, the fleet and the state'.
>
> He singled out 'some who have even given a million dollars' to the crews' [sic] families, in an apparent reference to Boris

> Berezovsky, the former 'grey cardinal' of the Kremlin who controls the daily newspaper *Kommersant*, which organised a campaign of voluntary donations to help the grieving families.
>
> He said: 'They would have done better to sell their villas on the Mediterranean coast of France and in Spain.
>
> 'Only then could they explain why the property was registered under false names and behind legal firms'.
>
> 'And we would probably ask the question - where did the money come from?'
>
> Mr. Berezovsky owns a villa on the Cote d'Azur in southern France, while the media magnate Vladimir Gusinsky and fellow controlling shareholders in the NTV television station have property in Spain."

Other Western newspapers contained similar reports.

608. On or about 23 or 24 August 2000, as a result of the adverse coverage given to the handling of the *Kursk* tragedy, Mr. Voloshin requested Mr. Berezovsky to visit him at the Kremlin. Mr. Voloshin gave evidence on behalf of Mr. Abramovich at trial about this meeting and the subsequent meeting with President Putin which took place the next day or up to a week later. Mr. Voloshin had known Mr. Abramovich since about 1995 and described himself as a close personal friend of Mr. Abramovich, although they had never done any business together. He had also known Mr. Berezovsky since 1993 and had worked with Mr. Berezovsky in relation to various projects including AVVA. He had an extremely close working relationship with Mr. Putin until Mr. Voloshin's political role ceased in 2003, whereupon the latter became a director of various major Russian companies. He described Mr. Abramovich's relationship with Mr. Putin as follows:

> "11. I am aware that Mr. Abramovich, in his role as both Governor of Chukotka and as one of Russia's most successful businessman, had a number of meetings with Mr. Putin during the period when I was Head of Russia's Presidential Executive Office. I would say that Mr. Putin had, and has, a good relationship with Mr. Abramovich - my impression, from seeing them together and hearing him speak of Mr. Abramovich, is that Mr. Putin views Mr. Abramovich as a good businessman and a pleasant, honest individual. I recall that President Putin was particularly pleased with what Mr. Abramovich achieved in Chukotka.
>
> 12. Nevertheless, despite the good relationship between Mr. Abramovich and Mr. Putin, I would not describe Mr. Abramovich as ever having been part of Mr. Putin's 'inner circle'; unlike, some might say,

> myself who worked closely with Mr. Putin for a number of years."

609. Mr. Voloshin was the only witness, apart from Mr. Berezovsky, who gave direct evidence at trial about these meetings. Although he gave evidence through a translator, I formed the impression, from the manner in which he gave his answers, his demeanour and the content of his answers themselves, that he gave his evidence honestly and directly. He was frank about his friendship with Mr. Abramovich and did not attempt to colour his evidence to suit the latter's case. Despite obvious difficulties in recollection given the passage of 11 years, his account of the meetings was more credible than that given by Mr. Berezovsky.

The first Kremlin meeting

610. In his witness statement Mr. Voloshin described the background to the first meeting as follows:

> "13. The background was that Mr. Berezovsky controlled the day-to-day management of ORT and Mr. Berezovsky's close colleague, Mr. Patarkatsishvili, had *de facto* control of all of the financial activity of ORT. The Government was the majority shareholder in ORT (holding a 51% stake) while the stake owned by Mr. Berezovsky and his partners legally did not enable him to have control over ORT, however he effectively controlled ORT's activities."
>
> 14. Mr. Berezovsky was using ORT for his own personal benefit on an almost daily basis, to further both his political and business interests and also, sometimes, those of his friends and associates. He played a very active role in managing the content of ORT programmes, often, I was informed, calling a number of times daily not only the general director Mr. Konstantin Ernst and other managers at the station, but even presenters and journalists. Mr. Berezovsky would, apparently, request that ORT's management show certain programmes, or alternatively suppress certain reports. Besides, as far as I am aware, the proceeds from advertising sales were channelled through companies controlled by Mr. Berezovsky, with only a fraction thereof reaching ORT. By that time it had become obvious that Mr. Berezovsky was increasingly using the channel as an instrument of his political influence."

611. In his oral evidence he added to this by saying that, on account of the *Kursk* tragedy:

> "… it became clear that the informal governance of ORT on the part of Berezovsky was something that needed to be put an end to[333]."

612. Mr. Voloshin's evidence in his first witness statement as to what was said at the meeting was as follows:

> "15. I recall explaining to Mr. Berezovsky that the Government wanted him to stop using ORT for his own political and financial benefit. I asked Mr. Berezovsky to stop influencing ORT's top-level management for that purpose.
>
> 16. I would say that our discussion was a difficult and rather emotional one. Mr. Berezovsky was obviously disappointed and used a lot of 'strong words' to express his clear anger at what I was saying."

613. He was absolutely clear that the objective of the meeting was to explain to Mr. Berezovsky that an end had come to Mr. Berezovsky's governance of ORT. Although, not surprisingly, he could not recall the nuances of the meeting well, what he clearly remembered, and gave articulate oral evidence about, was his specific task at the meeting and its objective:

> "I announce to Mr. Berezovsky … that for him in the future not to give instructions to ORT Management with regard to the content of TV programmes, and for the ORT managers to be given the appropriate information from us so that they should not follow Mr. Berezovsky's instructions with regard to the content. That was my objective, …."

614. He was certain that he did not discuss with Mr. Berezovsky whether he should sell or give up his shares in ORT:

> "No shares were discussed at that meeting, there wasn't any point in that. The objective of our meeting was to inform Mr. Berezovsky that the concert is over, the show is over, and he won't be able to impact the journalists, and he should not do that, and the journalists have the right to be free from his influence".

Mr. Voloshin explained that once Mr. Berezovsky lost his informal control and influence over the management, the government had achieved its objective. His evidence was that Mr. Berezovsky's influence had been informal and that no formal steps were therefore required to remove that influence. When it was put to him in cross-examination that Mr. Berezovsky had a clear recollection of Mr. Gusinsky being mentioned at the meeting, Mr. Voloshin said that although he did not recall Mr. Gusinsky being mentioned, it would have seemed very strange to him that he would have mentioned Mr. Gusinsky, as there would have been no need for him to

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[333] Day 25, page 29.

have done so. He roundly rejected the proposition that for so long as Mr. Berezovsky held 49% of ORT's share capital he "… was plainly in a position where he could affect the coverage that ORT gave of events in Russia"; he clearly explained that it was not Mr. Berezovsky's minority 49% shareholding that gave him the opportunity "to impact the position of journalists", but rather his informal relationship with, and exercise of influence over, them. He pointed out that there was no need to do anything radical with, or make changes to the structure of, ORT; the General Director, Mr. Ernst, remained in place (and indeed still does so to this day), and that all that was necessary was to give the message to Mr. Berezovsky, that from then on, he should cease to influence journalists, and also to the journalists, that they should operate free of his influence. Mr. Voloshin believed that he discussed this meeting with Mr. Abramovich shortly afterwards.

615. Mr. Rabinowitz submitted that Mr. Berezovsky's evidence that he was threatened by Mr. Voloshin at this first Kremlin meeting to surrender his ORT shares "as the State directed", or otherwise he "would end up like Vladimir Gusinsky" was supported by a number of other items of evidence. These included *inter alia*:

i) the terms of the ORT charter;

ii) an open letter written by Mr. Berezovsky to President Putin and published on 4 September 2000 in *Kommersant* (a newspaper which Mr. Berezovsky controlled); and

iii) the evidence of Mr. Goldfarb.

616. In my judgment none of these items of evidence, or indeed any other matter, persuaded me that I should accept Mr. Berezovsky's account of the meeting.

617. Mr. Rabinowitz submitted that, under the terms of the ORT charter, Mr. Berezovsky's and Mr. Patarkatsishvili's 49% stake in ORT acted as an effective veto on the appointment or dismissal of directors of ORT, and that, because, as things stood, Mr. Berezovsky's and Mr. Patarkatsishvili's associates made up the majority of the ORT board, that was an important provision in terms of control of ORT. Accordingly for that reason, he submitted, President Putin would have needed to obtain the surrender of Mr. Berezovsky's stake.

618. But, although Mr. Rabinowitz's analysis of the charter[334], so far as it went, was correct, it did not address the critical point as to the control of media coverage, i.e. as to what was reported, what was not reported, and whether television commentary would be allowed to be critical of government action or inaction. As was clear from the terms of the charter itself and, as Mr. Voloshin explained in evidence:

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334 This analysis was as follows: "By clause 11 the General Meeting of Shareholders had exclusive competence in a range of fields including: determining the size and make up of the Board of Directors, and the early termination of their authority (clause 11.2.4); and election of the General Director, and early termination of his authority, on proposal made by the President of the Russian Federation (clause 11.2.8). A decision under clause 11.2.4 (appointing or dismissing directors) required a 2/3 majority of those attending a General Meeting of Shareholders: clause 11.23. A decision to amend the ORT Charter required a 3/4 majority of those attending: clause 11.23." See paragraph 780 (4) of Mr. Berezovsky's written closing submissions.

i) under clause 13, control of the management of ORT's day-to-day operations, including programming, content, coverage etc was vested in a sole executive, namely the "Company General Director" (Mr. Ernst); thus, as Mr. Voloshin described, the Board of Directors "… usually had nothing to do with the content of ORT coverage … the Board of Directors would look at some general organisational financial aspects of the company activity, but it never scrutinised the content of the coverage"[335];

ii) under clause 11.2.8, it was the President of the Russian Federation who was to nominate candidates for election as General Director, or to propose the early termination of the authority of the General Director, by means of a resolution of the general meeting of shareholders; and

iii) any such resolution for election or removal was subject to a simple majority (i.e. 50:50) of shareholders under clause 11.23. Accordingly the government, by exercising the votes attached to its 51% stake could effectively remove, or threaten to remove, the General Director at any time, and thereby indirectly control programming and content.

619. Thus, as Mr. Voloshin described, what President Putin regarded as necessary, and what occurred within the week, was that Mr. Voloshin made it clear to Mr. Berezovsky and Mr. Ernst that Mr. Berezovsky's informal influence of, interference with, and control of, journalists and coverage was to cease. Irrespective of any personal views as to the desirability or propriety of State control of the media being exercised in such a way, I accept Mr. Voloshin's account of what was perceived as necessary to bring to an end Mr. Berezovsky's informal "impact" on journalists, and his evidence that no threat was made at the first meeting to require Mr. Berezovsky to surrender his ORT shares. There was no need to do so. Ultimately the Russian State had power, whether by exercise of its majority vote to remove or appoint the General Director, or by a threat to do so, or by exercise of its power to withdraw ORT's licence or vary its conditions, to deprive Mr. Berezovsky of any effective influence over the content of ORT's programming. No doubt, previously, the State had been content for Mr. Berezovsky to exercise such influence, given that he had been largely supportive of the regime and had obtained funding for ORT. But once he had ceased to be a benign supporter of the government, no doubt that position changed.

620. I deal with the open letter from Mr. Berezovsky to President Putin published in *Kommersant* on 4 September 2000 below in the context of the second Kremlin meeting.

621. Mr. Goldfarb gave evidence at trial to the effect that Mr. Berezovsky told him shortly after the meeting that Mr. Voloshin had demanded that Mr. Berezovsky surrender his 49% stake in ORT to a "friendly entity", and if not Mr. Berezovsky "would go the same way as Gusinsky". An account in somewhat different terms was given by him in a witness statement sworn in support of Mr. Berezovsky's asylum application in 2003, which did not expressly refer to the transfer of the 49% stake to a friendly entity; it stated merely that:

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335 See Day 25 pages 44-45.

> "Mr. Berezovsky said that he had been told by Voloshin that Putin wanted him to surrender control of ORT because 'the President wants to run the station himself'. Mr. Berezovsky at that time had 49% of ORT, with 51% held by the government. He had an effective veto on top management appointments, which required a 70% majority. Mr. Voloshin told Mr. Berezovsky that he would have to change the management and that, if not, Mr. Berezovsky would go the same way as Gusinsky."

The reference to "the President wants to run the station himself" and "changing the management" etc. was more consistent with Mr. Voloshin's account. However, irrespective of whether there was any real inconsistency between the two statements, I can only place limited reliance on Mr. Goldfarb's hearsay evidence in either version; not only was it wholly derived from what Mr. Berezovsky had told him at the time, but also it would have suited Mr. Berezovsky's purposes, at the time of his asylum application in 2003, to have characterised his role as a defender of an independent free press, subject to intimidatory threats from the Russian State, rather than as a fugitive from justice, facing criminal investigations into alleged misappropriations of State assets.

622. Accordingly, I accept Mr. Voloshin's account that no threat was made by him, whether on behalf of President Putin, or otherwise, at the first Kremlin meeting to the effect that, if Mr. Berezovsky did not surrender his shares in ORT, he would go the way of Mr. Gusinsky.

The second Kremlin meeting

623. According to Mr. Berezovsky, the following day (i.e. 24 or 25 August 2000), or possibly, according to Mr. Voloshin, within the week, a further meeting took place between Mr. Berezovsky and Mr. Voloshin in his office in the Kremlin. On this occasion President Putin was also present, at Mr. Berezovsky's request. Mr. Berezovsky's evidence in his fourth witness statement was to the following effect:

> "313 I have a very vivid recollection of this meeting. Mr. Voloshin was waiting for me in his office. President Putin then arrived around ten minutes later. I told President Putin that I believed ORT's coverage of the *Kursk* disaster was entirely proper and that the openness of the coverage actually helped him because it demonstrated that he was not seeking to censor the media.
>
> 314 President Putin listened to what I had to say. After I had finished, he produced a file. He then read from it. I do not recall his exact words, but the gist of what he said was that both ORT and I were corrupt. He also accused me of hiring prostitutes to pose as the widows and sisters of sailors killed aboard the *Kursk* to attack

him verbally. These allegations were completely untrue and I told President Putin this.

315 He too demanded that I surrender my shares in ORT to the state or to an entity acceptable to the government and indicated that he wished to manage ORT personally.

316 I asked President Putin whether sending me the way of '*Goose*' (this was Mr. Gusinsky's nickname: '*Gus*' is the Russian for goose) was his idea or Mr. Voloshin's. President Putin confirmed that Mr. Voloshin had correctly passed his (President Putin's) message to me the previous day, namely that I would be imprisoned if I did not agree to surrender or direct the surrender of my shares in ORT.

317 I was shocked and disappointed by what President Putin said to me. I accused him of wanting to control all mass media in Russia himself. President Putin then said '*Goodbye, Boris Abramovich*', which ended the conversation. I was disappointed by this because he never addressed me using my patronymic (Abramovich), which is a sign of formality. I said '*Goodbye Volodya*', which is the informal version of Vladimir. President Putin then left the room."[336]

In cross-examination he said that Mr. Voloshin was lying when the latter said that at the meeting, President Putin said he wanted to see ORT run collectively by its Board of Directors and its General Director and not just by Mr. Berezovsky in his own interest.

624. Mr. Goldfarb (who said that Mr. Berezovsky told him about the meeting afterwards) gave a somewhat different account. He said that, in response to Mr. Berezovsky's enquiring whether the threat that he "would go the same way as Gusinsky" came from President Putin, President Putin left the room saying "that he had nothing more to say"[337].

625. Mr. Voloshin denied Mr. Berezovsky's account of this meeting[338]. His evidence was that the meeting was very short, lasting about five to ten minutes, which Mr. Berezovsky himself had requested (which was common ground) because he required confirmation from President Putin himself as to the decision to strip Mr. Berezovsky of his authority in relation to ORT (which is not common ground). Mr. Voloshin said that at the meeting:

"21. President Putin said that he wanted Mr. Berezovsky to stop his involvement in ORT's affairs and step away

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336 Berezovsky 4th witness statement, paragraphs 314-317.

337 Goldfarb 1st witness statement, paragraph 51.

338 Voloshin 1st witness statement, paragraph 22; Voloshin 2nd witness statement, paragraphs 39-41; Day 25, pages 46-49.

> from managing the channel. In future he wanted to have the channel effectively managed by the Board of Directors and its management. President Putin said that in practical terms, this meant that Mr. Patarkatsishvili should resign from his position as Deputy Manager and that Mr. Berezovsky should cease giving instructions to ORT's management. Besides this, Mr. Berezovsky should also relinquish his control of ORT's financial flows.
>
> 22. The discussion was very emotional. However,·I do not remember that I or President Putin threatened Mr. Berezovsky in any way - I cannot recall either of us saying to Mr. Berezovsky that we would do something to him if he did not comply with our request. I do not remember the *Kursk* incident being discussed during this meeting. Nor can I recall Mr. Gusinsky being mentioned. The meeting was very short-it lasted only 5-10 minutes. There was no discussion about shares.
>
> …
>
> 24. Soon after the meeting, Mr. Ernst became the real manager of the channel, freed from the influence of Mr. Berezovsky. The channel started to receive all its advertising revenues and its financial situation improved substantially."

626. In cross-examination Mr. Voloshin accepted that it was possible that the *Kursk* incident had been mentioned, but he was clear that there had been no mention of Mr. Gusinsky or any threat that Mr. Berezovsky had to surrender ORT shares; again, his evidence was that the question of shares was not discussed because there was no need to do so. He explained the meeting was very emotional and dramatic, because President Putin warned Mr. Berezovsky that a decision had been made that he "should not impact ORT anymore" and that Mr. Berezovsky "simply was informed about the decision that has been taken"[339].

627. I accept Mr. Voloshin's account of what occurred at the meeting. I found Mr. Berezovsky's account to be exaggerated and unreliable. The thrust of Mr. Berezovsky's attack on Mr. Voloshin's credibility was that neither President Putin nor Mr. Voloshin had responded to what was said by Mr. Berezovsky in his open letter to President Putin dated 4 September 2000 and published in *Kommersant*. This letter began:

> "Last week, a senior official of your administration gave me an ultimatum: surrender my shares in the ORT TV network to the government within two weeks, or 'follow Gusinsky' – apparently to Butyrskaya prison. The reason for this was your

339 Voloshin Day 25, pages 48-50, 55.

> displeasure with ORT's coverage of the *Kursk* submarine disaster. 'The president himself wants to manage ORT', your representative said to me."

628. When challenged in cross-examination, Mr. Voloshin gave reasons for the fact that neither he nor President Putin had publicly commented on, or responded to, this letter, which I found to be entirely understandable and credible[340]. He referred to the fact that not only was 2000 a dramatic year for Russia, with a number of tragedies and a heavy legislative programme, but also that, from a practical point of view, it was quite impossible to respond to all of Mr. Berezovsky's "utterances". He pointed out that, over the course of 2000, Mr. Berezovsky had at different times talked about selling the ORT stake to the State; then selling the shares to private investors; then not selling the shares at all; then putting the shares into trust management; then not; and then creating Teletrust and then not doing so. He also said that, when he saw the letter at the time, he believed that Mr. Berezovsky had inserted the reference to Mr. Gusinsky as an attempt to justify to the public why he was no longer controlling ORT's management. As he also pointed out, the letter itself referred to the fact that he was intending to place the 49% stake into a trust to be managed by a group of journalists and other members of the public, and an invitation to President Putin to do the same with the State's 51% stake - something that would appear to be inconsistent with him being subject to a continuing coercive threat to surrender the shares.

629. I also accept Mr. Voloshin's important evidence that, after August 2000, Mr. Berezovsky effectively stopped exercising influence over the General Director and journalists at ORT, notwithstanding the fact that Mr. Berezovsky's associates may have remained directors of the company.

630. On 7 September 2000, Mr. Berezovsky announced the establishment of Teletrust, a group of individuals who would manage the minority stake in ORT. However, that same day President Putin raised doubts about the proposal:

> "Asked about the transaction at a news conference during the UN Millennium Summit on Thursday [7 September], Putin voiced doubt about the degree of the new trustees' independence.
>
> 'If these people are controlled by Mr. Berezovsky and depend on him, then the move makes no sense,' Putin said."

631. In a subsequent interview on or about 19 September 2000, Mr. Berezovsky gave an interview in the United States in which he alleged that President Putin had threatened him with arrest and jail if he failed to turn over his stake in ORT to the State. Although the *Kommersant* letter and the statements made in this interview were consistent with Mr. Berezovsky's case at trial, I cannot ascribe to them sufficient weight to corroborate his account of the two Kremlin meetings, so as to persuade me to accept his evidence and reject that of Mr. Voloshin.

632. But my reasons for reaching this conclusion are not limited to my views as to the respective credibility of Mr. Berezovsky and Mr. Voloshin, having heard their

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340 See Day 25, pages 52-55.

evidence in relation to the two Kremlin meetings. In addition, I rely on the following matters:

i) On 27 August 2000, according to Mr. Berezovsky, and the November 2007 proofing material of Mr. Patarkatsishvili, Mr. Patarkatsishvili met President Putin at the Kremlin; Mr. Patarkatsishvili remembered the date because it was the day on which the Ostankino TV tower burnt down. In the proofing notes, and in Section G of the draft proof prepared subsequently headed "Dispute with the Kremlin", Mr. Patarkatsishvili is recorded as having given a detailed account of that meeting, and the reasons leading up to it, which he ascribed to President Putin being upset at the coverage given by ORT to the *Kursk* tragedy. In his fourth witness statement, Mr. Berezovsky also described the account which Mr. Patarkatsishvili had given him about the meeting on 27 August, 2000, in terms which appear to have been directly taken from Mr. Patarkatsishvili's draft proof. Mr. Patarkatsishvili's account, as set out in the draft proof, of the "Dispute with the Kremlin" and of the meeting on 27 August, 2000 (which he said lasted for about an hour) was as follows:

> "**G DISPUTE WITH THE KREMLIN**
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> 43. By the middle of 2000 ORT had begun to criticise aspects of Putin's leadership and policies. Boris told Putin of his concerns in private, but when Putin did not change his ways Boris said that he would start to be more open. He duly published letters to Putin in the press, and eventually resigned his Duma seat in protest.
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> 44. Our problems worsened with the *Kursk* submarine tragedy [12 August 2000]. At this point in time Boris still had direct access to President Putin and spoke with him regularly. They still enjoyed a special relationship – Boris was normally able to speak to the President at one hour's notice. Boris tried to reach Putin, who was on vacation at the Baltic sea resort Sochi when the *Kursk* sank. It appeared at that time that the crew members could be saved. However, Putin did not cut short his holiday. The crew died because of the failure of the government to organise a rescue attempt.
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> 45. Putin was upset with ORT's coverage as he did not think it was loyal to him. At the time the main TV tower in Ostankino burned down [Sunday, 27 August 2000] I was telephoned by Patrushev, the head of the FSB, and asked by him to come to his office. I remember mentioning the TV tower being on fire and being told that the call was connected with the fire.
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> …

49. Putin asked me what kind of 'strange game' Boris was playing and asked me to use my influence to change Boris's position. He mentioned ORT, and said that he would like us to 'clear out'. I was surprised by what he said, and asked him if I had understood him correctly – did he want us to give up our shares and pass them to somebody?

50. He confirmed that this was what he wanted. He said that no-one had the right to take risks with television, and while he didn't care what other businesses we went into, he wanted us to give away the shares of ORT. However, he said we could sell to him, and that he would pay.

51. I then asked him with whom we could negotiate commercially. He put forward Mikhail Lesin, Minister for Press, Television, Radio Broadcasting and Media Communication, who had previously signed the infamous appendix 6 to the agreement under which Gusinsky (while in custody in Moscow) surrendered his interests in NTV in return for immunity from prosecution.

52. The meeting concluded by me apologising for my improper dress. I also mentioned that I had thought I was going to be arrested. I distinctly remember that Putin tapped me on the shoulder and said: 'We are friends, do any other business and I will support you, but if you stay in TV, you will be my enemy.

53. I subsequently met with Lesin and began negotiations. We agreed a price for our shares in ORT of $300 million. I was told by Lesin that this was the maximum amount he had at his disposal as the money for Gusinsky's NTV had also had to come out of his budget. I wanted to sell at this price but Boris was adamant that we should not."

633. There are a number of significant features of Mr. Patarkatsishvili's account of his meeting with President Putin on 27 August 2000 - on the assumption that his account was correct and was correctly recorded in the draft proof. First, although strong pressure was clearly being applied by President Putin on Mr. Patarkatsishvili to sell the shares, no actual express or implied threat of arrest was made at the meeting – unless the reference to "you will be my enemy" should be so construed. Second, and more importantly, Mr. Patarkatsishvili's account (as recorded in the interview notes and subsequently in the draft proof) not only fails to mention the alleged threats made by Mr. Voloshin and President Putin at the two prior[341] Kremlin meetings with

[341] According to Mr. Berezovsky's evidence, both meetings are likely to have taken place before Mr. Patarkatsishvili's meeting with President Putin.

Mr. Berezovsky, but is also wholly inconsistent with the account as given by Mr. Berezovsky of such meetings. Thus it seems to me to be inconceivable that, if Mr. Berezovsky's account of his two meetings were correct:

i) Mr. Berezovsky would not have mentioned to Mr. Patarkatsishvili, prior to the latter's meeting on 27 August, the fact that, at the two prior meetings, threats had been made by Mr. Voloshin and President Putin that if the 49% stake were not surrendered, Mr. Berezovsky would go the way of Mr. Gusinsky;

ii) Mr. Patarkatsishvili would have stated that he had been "surprised" at the suggestion made by President Putin and had asked him to clarify whether he wanted Mr. Berezovsky and Mr. Patarkatsishvili to give up their shares; if Mr. Berezovsky's case were correct, President Putin had previously, at the two Kremlin meetings, insisted that the 49% stake should be surrendered;

iii) the attendance notes, and Mr. Patarkatsishvili's draft proof addressing the "Dispute with the Kremlin" should not have made some reference to the earlier[342] threats said to have been made by Mr. Voloshin and President Putin to Mr. Berezovsky.

634. Second, by 4 September 2000 (the date of the *Kommersant* open letter) Mr. Berezovsky and Mr. Patarkatsishvili, on their own account, were involved in negotiations with the State for the sale of the 49% ORT stake; Mr. Berezovsky therefore had a very real interest in putting pressure on the State, by means of potentially embarrassing allegations of ultimatum, to ensure that the price was as high as possible.

635. Third, as the evidence demonstrated, Mr. Berezovsky was a grandmaster in using the media to further his own political and personal goals and to dramatise the importance of his own role. By August and September 2000, it was clear that Mr. Berezovsky was leading up to having a public trial of strength with President Putin. Against a background where he might understandably have felt that, in the light of his public criticism of the regime, he was personally vulnerable to further investigation and possibly arrest, there was every reason for him from a public relations point of view to attempt to suggest that he had been given an improper ultimatum to relinquish his ORT stake.

Subsequent events

636. On 17 October 2000, Mr. Berezovsky was summoned to the office of the Prosecutor-General for further questioning in relation to the Aeroflot investigation. Mr. Berezovsky asserted that this was to apply pressure upon him to surrender his ORT shares. I do not find that assertion proved, although I am prepared to assume, without deciding, in his favour that, by this stage, President Putin wanted to apply pressure on Mr. Berezovsky in order to ensure that he did not continue to make adverse comments about President Putin or his regime, whether in *Kommersant* or in interviews to the press. The next day Mr. Berezovsky was required to leave the State

342 Even if one or both of Mr. Berezovsky's meetings took place after Mr. Patarkatsishvili's meeting with President Putin (which seems unlikely), this point holds good.

dacha in Alexandrovka which he and his family had rented since 1994. On 26 October 2000, President Putin gave an interview to *Le Figaro*, in which he said:

> "Generally, I don't think that the State and the oligarchs are irreconcilable enemies. Rather, I think that the State is holding a big club [cudgel] in its hands, which it will use only once. To deliver a crushing blow on the head. We haven't yet resorted to that club. We just picked it up – and that was enough to attract public attention. But if we get really angry, we will not hesitate to use it; we don't want our State to be blackmailed. If need be, we will destroy any instruments of blackmail, whatever they are."

A report in the *Moscow Times* on October 27 quoted the article in *Le Figaro* and commented:

> "Putin was responding to a question about criticism of him by Boris Berezovsky, a business magnate with substantial media interests who quit Parliament in July after accusing Putin of trying to turn Russia into a Latin American-style regime."

637. Mr. Abramovich accepted that President Putin's statement could have been construed as a threat to Mr. Berezovsky, as indeed it could. On 30 October 2000, Mr. Berezovsky left Russia for France. He was justifiably concerned that, if he remained in Russia, he might be arrested.

Negotiations between Mr. Patarkatsishvili and Mr. Lesin in October 2000 for the sale of the ORT shares

638. It would appear from the draft proofing notes, and draft proof, of Mr. Patarkatsishvili that, in mid-October 2000, after his meeting with President Putin and prior to Mr. Berezovsky's departure from Russia, Mr. Patarkatsishvili discussed a sale of the 49% ORT stake with Mr. Lesin, the Minister of Telecommunications, who offered to purchase the stake for $300 million. However Mr. Berezovsky was not prepared to accept that offer of $300 million prior to his departure from Russia. Although the interview notes, in the context of an offer of $150 million, refer to a rule apparently operated by the Kremlin, that, if the first offer was refused, it would be substantially reduced, there was no evidence that Mr. Lesin ever made an offer to Mr. Patarkatsishvili in that reduced amount.

Negotiations between Mr. Patarkatsishvili, Mr. Berezovsky and Mr. Abramovich in October, November and December 2000 for the sale of ORT shares

639. What was clear from the evidence of both Mr. Abramovich and the proofing materials, and as I find as a fact, in October 2000, probably on 24 October, at the Restaurant Fouquet in the Champs Elysée, Paris, Mr. Abramovich and Mr. Patarkatsishvili agreed in principle that the former would buy out Mr. Berezovsky's and Mr. Patarkatsishvili's interest in ORT. I accept Mr. Abramovich's evidence that the possibility of his buying the stake in ORT was first raised, not by him, but by Mr. Patarkatsishvili, and that it was the latter who

approached him in mid October 2000 with a proposal to sell[343]. The notes and draft proof associated with Mr. Patarkatsishvili's interviews of June 2005 suggest that Mr. Patarkatsishvili made the approach in response to the failure of his discussions with Mr. Lesin. He had apparently concluded that the government was an untrustworthy negotiating partner and that he and Mr. Berezovsky viewed Mr. Abramovich as a "trusted man". I also accept Mr. Abramovich's evidence that Mr. Patarkatsishvili was "trying to talk [him] into it quite intensely". Mr. Abramovich responded by offering to help them by buying the stake, initially at a figure of $100 million.

640. I reject the assertion made by Mr. Berezovsky that, in agreeing to purchase the shares, Mr. Abramovich was acting as the tool of President Putin and the Russian State. As he described, Mr. Abramovich had his own reasons for being concerned about "the political situation around Mr. Berezovsky"; it was known that they were close and that Mr. Berezovsky derived his money from Mr. Abramovich. Mr. Abramovich had fears that any political fall-out with President Putin, so far as Mr. Berezovsky was concerned, might have reflected badly on him. Mr. Abramovich described his reasons for acceding to Mr. Patarkatsishvili's suggestion and agreeing to purchase the shares as follows:

> "I had two reasons. Number one, I was associated closely with Mr. Berezovsky, I was like a shadow of Mr. Berezovsky, so if at some point he wouldn't calm down and if he didn't stop using ORT in his fight with the government, I would suffer personally and most importantly Sibneft as a company would not be stable[344]. Secondly, Badri understood that very well: he understood that sooner or later this would come to a sorry end. Badri understood that and he was persuading me, talking me into acquiring the shares; then Boris would calm down and then we'll see what should be done with it. Initially, from the very first discussions, we discussed that I would acquire these shares, I would hold them for a while; and later, when it all settles down, he'll take them back. However, this option was forgotten very soon."

641. I found that explanation to be credible. His account was also supported by Mr. Voloshin's evidence to the effect that President Putin had not instructed Mr. Abramovich to purchase the shares. After the meeting at which Mr. Abramovich and Mr. Patarkatsishvili had agreed the sale in principle, Mr. Abramovich met Mr. Voloshin to discuss the purchase and whether it made sense for him to buy the shares in order to avoid any possible future conflicts between Mr. Berezovsky and the State, in relation to ORT. Mr. Abramovich's evidence was that if Mr. Voloshin had indicated he was against the sale, it would not have gone ahead. Mr. Voloshin's response was that what was important to the government was that Mr. Berezovsky did not interfere with the channel's operation anymore, while the rest was not essential. I accept Mr. Voloshin's account that he was not involved in any way in the purchase of

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343 Abramovich 3rd witness statement, paragraph 213. Mr. Abramovich recalled: Abramovich Day 20, page 38.

344 He also said "Everybody knew that I financed him, everyone knows that he was my *krysha*": Day 24, page 61.

the ORT shares by Mr. Abramovich; or involved in, or aware of, any discussions about the price to be paid by Mr. Abramovich for them.

642. I find that it is probable that at a subsequent meeting in early November 2000 at Mr. Abramovich's office at Sibneft in Moscow, also attended by Mr. Andrei Gorodilov, Mr. Patarkatsishvili reported to Mr. Abramovich that Mr. Berezovsky was reluctant to sell but could be persuaded to do so, if the price was increased to $150 million. Mr. Abramovich agreed to purchase at this price and, at least as between Mr. Abramovich and Mr. Patarkatsishvili, a commercial deal was struck at this price. Mr. Abramovich's evidence on these points was corroborated by Mr. Andrei Gorodilov, who was instructed by Mr. Abramovich in late October to liaise with Mr. Fomichev in relation to the detailed arrangements for the deal[345], and who attended the meeting between Mr. Abramovich and Mr. Patarkatsishvili in Moscow at which the price was finalised.

643. Thereafter, and possibly even earlier in October, Mr. Andrei Gorodilov liaised with Mr. Berezovsky's financial assistant, Mr. Fomichev, about the detailed arrangements for the purchase, on the basis that it had been agreed in principle. I conclude that Mr. Fomichev would not have been involved in these negotiations unless Mr. Berezovsky had approved of the purchase at least in principle, or, even if he had not actually decided at that stage to sell, at least was content for the time being to go along with the arrangements for the proposed sale.

644. Mr. Rabinowitz challenged Mr. Abramovich's changing and vague recollection of the chronology of these events. However it was not surprising that, after the passage of time, Mr. Abramovich could not be certain about specific dates. But the precise chronology did not matter. What was critical was that the evidence showed that, as early as late October/November 2000, and in any event well before the date of the alleged Cap d'Antibes meeting on 7-9 December 2000 at which Mr. Berezovsky alleged he was intimidated into agreeing to sell the ORT stake, the transaction was subject to ongoing negotiation and detailed discussions, as between Mr. Abramovich's representatives and Mr. Fomichev on Mr. Berezovsky's and Mr. Patarkatsishvili's behalf, about the arrangements (including for payment) which were necessary for the sale to take place.

645. Mr. Abramovich's travel records and the evidence of Mr. Andrei Gorodilov showed that Mr. Abramovich had travelled to Cap d'Antibes on 6 November 2000. The evidence also showed that both Mr. Berezovsky and Mr. Patarkatsishvili were at Cap d'Antibes on that date. Mr. Berezovsky's evidence on this point fluctuated, but ultimately he denied that there was any meeting on this date. I accept that Mr. Abramovich's recollection, albeit based on his reconstruction from the documents, is likely to be correct and that he did, at the request of Mr. Patarkatsishvili, fly down to Cap d'Antibes to have a meeting with Mr. Berezovsky and Mr. Patarkatsishvili to discuss the ORT sale on that date. Whether the $150 million figure was agreed in principle at this meeting, or at the November meeting in Moscow between Mr. Abramovich and Mr. Patarkatsishvili, is not material.

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345 Gorodilov 1st witness statement, paragraphs 47, 64.

646. Although Mr. Rabinowitz criticised the discrepancies between Mr. Abramovich's account as contained first in the Re-Amended Defence, and subsequently in the Re-re-Amended defence, and then in his evidence, it is not surprising, given the passage of time, that the precise details of chronology were not recalled by Mr. Abramovich or were incorrectly set out in his statements of case. Nor do I accept Mr. Berezovsky's assertion[346] that this was a dishonest[347] case which "Mr. Abramovich and team therefore came up with":

i) following their realisation "that the most effective way to deny the threats made by [Mr. Abramovich] at the Cap d'Antibes meeting would be simply to deny the meeting took place after the arrest of Mr. Glushkov ..."; and

ii) in order to get round the embarrassment that his original Defence "admitted that the meeting in question [i.e. the Cap d'Antibes meeting] took place in the period between Mr. Glushkov's arrest and 25 December 2000".

647. I do not accept that Mr. Abramovich's original Defence actually did admit the suggested timeframe of such a meeting[348], but, even if I were wrong on that, and the pleading is to be construed as suggested by Mr. Rabinowitz's detailed exegesis, it is not surprising in a case of this sort that further evidentiary investigations made before trial result in the production of further documents, such as travel records, which shed a different light on the timing of events. That clearly happened in this case. Moreover given the changes in Mr. Berezovsky's case as to the alleged date of the Cap d'Antibes meeting, it is not in the least surprising that, in preparation for trial, Mr. Abramovich focused more intently on the timings of the relevant meetings. In addition, I find that it would have been wholly consistent with the manner in which the three men did business for Mr. Patarkatsishvili to have suggested that Mr. Abramovich should fly down to the south of France in a private plane to discuss the proposed sale with Mr. Berezovsky. The suggestion put to Mr. Abramovich in cross-examination that he and Mr. Gorodilov travelled to Cap d'Antibes solely for purposes connected with Mr. Abramovich's purchase of the Chateau de Croë was not made out.

648. Mr. Berezovsky himself accepted that he knew that discussions were taking place between Mr. Patarkatsishvili and Mr. Abramovich in October and November 2000 in relation to the sale of the ORT stake and that he had discussed the negotiations with Mr. Patarkatsishvili.

649. There was a considerable amount of documentary evidence to show that, during November 2000, preparations were made not only for the transfer by Mr. Berezovsky and Mr. Patarkatsishvili of their shares in ORT to a company controlled by Mr. Abramovich, but also for the transfer of the 11% stake in ORT held by LogoVAZ

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346 As made at paragraphs 840-846 of Mr. Berezovsky's written closing submissions.

347 As submitted in paragraph 846 *ibid*.

348 Paragraph D27.1 of Mr. Abramovich's Defence admitted that Mr. Abramovich attended a meeting with Mr. Berezovsky and Mr. Patarkatsishvili "on a date prior to 25 December 2000" (that being the date on the face of the agreement to sell the ORT stake). On a normal reading of paragraph 27 in its entirety, this was an admission that they met before the contract was made, but not that they met in any particular period before the contract was made; thus paragraph D27.2 pleaded that Mr. Abramovich did not believe that the meeting referred to was at Cap d' Antibes, and paragraph D27.3 denied the remainder of the allegations made in paragraph C27 to which it was responding.

to another Abramovich-controlled company. These documents included pre-emption notices, board minutes and transactional documents and showed the involvement of representatives both on Mr. Berezovsky's side and on Mr. Abramovich's side. Mr. Fomichev was most unlikely to have been involved in the transaction with Mr. Gorodilov without Mr. Berezovsky's approval. Mr. Rabinowitz challenged some of the documents as being backdated, but although that might have been the case in relation to a few documents, the meta data or other evidence demonstrated that, even where backdating took place, the majority of the critical documents were nonetheless prepared, or in the course of preparation, in November 2000.

The Le Bourget meeting

650. Passages in the transcript of the Le Bourget meeting, which took place on 6 December 2000, are also consistent with an agreement having been reached at least in principle as between Mr. Abramovich and Mr. Patarkatsishvili in Moscow in November, with the discussion at the Le Bourget meeting being directed at certain aspects of the structure of the deal which were still outstanding. These arose mainly from the wish of Messrs Berezovsky and Patarkatsishvili to receive the funds into their personal bank accounts outside Russia without obtaining Russian exchange control permission or encountering problems with Western money-laundering regulations. It appears that the Le Bourget meeting of 6 December 2000 was arranged in order, amongst other things, to finalise such matters before Mr. Abramovich's imminent trip to Chukotka for the gubernatorial elections.

651. Mr. Berezovsky alleged in his fourth witness statement that:

> "… whilst the initial purpose of the meeting was to discuss mutual business, it quickly became apparent that the main purpose for Mr. Abramovich was to put pressure on Badri and me to agree to the sale of ORT" [349].

I do not accept that as a correct analysis of the Le Bourget transcript. As submitted on behalf of Mr. Abramovich in his written closing submissions, the transcript referred at several points to an agreement for the sale of the ORT stake which had already been reached as between Mr. Abramovich and Mr. Patarkatsishvili, and which Mr. Patarkatsishvili was saying he and Mr. Berezovsky were ready to sign. For example:

i) At Box 234, it was Mr. Patarkatsishvili, rather than Mr. Abramovich, who first raised the proposed ORT sale:

> "Fine ... nnn ... let's now deal with ORT. Well, Roma, we are absolutely ready (on all) the parameters, including the ... nnn ... yes. We had a problem with Borya, and we sorted that out too. (He) is in England, he is ready, we disclosed the documents, and we are ready to sort it all out officially. How shall we proceed."

ii) Mr. Abramovich's response (Box 235) was:

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[349] Berezovsky 4th witness statement, paragraph 346.

"We also have everything ready, as always and like everybody"

652. As Mr. Berezovsky acknowledged in cross-examination, Mr. Patarkatsishvili was saying that they were now ready to go ahead[350]. Mr. Berezovsky also admitted that the reference by Mr. Patarkatsishvili in his presence to "our agreement in Moscow" related to the agreement made with Mr. Abramovich for the sale of the ORT shares[351]. Mr. Berezovsky suggested that Mr. Patarkatsishvili "tried to play a game" - in other words that Mr. Patarkatsishvili was merely pretending to go along with Mr. Abramovich's idea of the proposed sale. But it is impossible to draw that inference from the transcript and it would make no sense in the light of Mr. Patarkatsishvili's comment that the problem with Mr. Berezovsky had been "sorted out".

i) At Box 238, Mr. Patarkatsishvili said:

> "No, in fact, when we made our agreement, when we made our agreement in Moscow, yes, you said the following: that as you are taking it all on your account, I mean, you are the one paying for it, right, so you will not have any problem with transfers, because the payment transfer will originate from the West. Then we got this scheme ...."

ii) There was then a long discussion, in the course of which Mr. Abramovich and Mr. Patarkatsishvili both spoke to Mr. Gorodilov on the telephone, about how the proceeds might be remitted to England in a manner which was tax-efficient and consistent with Russian exchange controls and British money-laundering regulations. The conversation between Mr. Patarkatsishvili and Mr. Gorodilov concluded with Mr. Patarkatsishvili saying (Box 402):

> "Therefore we don't care where the money comes to London from. You see, don't you? In this case, talk to Roman. He (will give you his agreement) to this (deal)."

iii) Mr. Abramovich then said, "well, let's yes, lets agree" (Box 403), and Mr. Patarkatsishvili responds (still over the phone) (Box 404):

> "… and we are ready, we are ready to carry it out"

iv) Later, while Mr. Abramovich was talking on the phone to Mr. Gorodilov, Mr. Patarkatsishvili had a private conversation with Mr. Berezovsky. Mr. Patarkatsishvili said to Mr. Berezovsky (Box 408):

> "Borya, well, we need to finish this off, don't you think? So a decision must be taken, one way or another, right? I am absolutely fine with what I am being offered..."

Mr. Berezovsky did not demur. At Box 410 there was a further private conversation about the costs of legalisation of the funds to satisfy money-laundering enquiries. Mr. Berezovsky suggested both in his commentary on

350 Berezovsky Day 7, pages 30-38.
351 Berezovsky Day 7, page 41.

the transcript and in his evidence that Mr. Patarkatsishvili was playing a game and stringing Mr. Abramovich along, because Mr. Berezovsky still had the intention to put the shares into a trust. But whatever may have been in Mr. Berezovsky's mind at the time, this suggestion was not consistent either with what Mr. Patarkatsishvili was saying, or with the fact that, while Mr. Abramovich was still on the telephone to Mr. Gorodilov, Mr. Patarkatsishvili was having a private conversation with Mr. Berezovsky and during the course of this conversation Mr. Berezovsky appeared to be perfectly happy with what Mr. Patarkatsishvili additionally had negotiated[352]. Mr. Berezovsky was not recorded as saying to Mr. Patarkatsishvili, even in private, that he was not selling, or that he had not yet made up his mind whether he was going to sell.

v) Immediately after Mr. Abramovich had finished speaking to Mr. Gorodilov, he said that Mr. Gorodilov was waiting for a document (Box 416). To this Mr. Patarkatsishvili responded (Box 417):

"The document we shall organise today, no problem."

vi) A little while later, after some discussions about other unrelated sums that Mr. Patarkatsishvili wanted Mr. Abramovich to pay, Mr. Abramovich had the following exchange with Mr. Patarkatsishvili (Box 428-431):

"A: We could now close this deal as it is, and later – I promise – we shall always find understanding on this matter

P: Sure, sure…

A: (So then) we shall finalise this deal, so that I could report on it without further ado, (that) the deal is done…nnn..

P: No problem…

A: So that he can finish the … election campaign in peace."

653. Mr. Abramovich recalled that at this point Mr. Berezovsky did not display any negative attitude to finalising the arrangements[353].

654. Finally, at Boxes 448-450, Mr. Abramovich and Mr. Patarkatsishvili had the following exchange:

"P: Right, it's settled then, no problems. No problems. De facto we don't lose anything because we are compensating the amount we stand to lose now so that later ... And as for what we'd lost already - well, it's gone. In a word, it's like this there... Rom, so we …."

352 Berezovsky Day 7, page 54.
353 Abramovich Day 24, page 53.

A: What, then, should we sign then so I could take it to Vladimir Vladimirovich [President Putin], show it to him and say: here you are, the deal is done, nnn …

P: But we have signed everything. Now as soon as the payment goes through, they can already get the shares … nnn … we have already signed everything (we have everything signed)[354]."

655. I accept Mr. Abramovich's evidence, which is supported by the transcript, that by this stage, so far as he was concerned, the deal had been done in principle, and finalised in Mr. Berezovsky's presence, subject only to documentation[355]. I accept that Mr. Abramovich had the clear understanding at this point that there was nothing else to discuss[356], and that Mr. Berezovsky had given the impression that "he was absolutely fine with it, absolutely agreed" [357]. The only matters outstanding, therefore, so far as Mr. Abramovich was concerned, were the documentation and the arrangements for the transfer of the funds to the West. What had been agreed at least in principle, so far as the mechanics of payment were concerned, was that $10 million was going to be paid in Russia and the remainder offshore.

656. Nor, contrary to Mr. Berezovsky's assertion does a fair reading of the transcript suggest that Mr. Abramovich was putting pressure on Mr. Patarkatsishvili and Mr. Berezovsky to sign written documents. As Mr. Abramovich explained, he did not have any relevant documents for signature with him and in any event the structure of the deal had changed, which would have required revised documentation. Mr. Rabinowitz submitted that certain passages of the Le Bourget transcript demonstrated that Mr. Abramovich was acting as President Putin's messenger in relation to ORT. I do not accept that submission. It was clear from both Mr. Abramovich's and Mr. Voloshin's evidence that Mr. Abramovich had discussed Mr. Patarkatsishvili's position and his own proposed purchase of the ORT shares with President Putin or Mr. Voloshin, and that he intended to inform President Putin of the sale once it was finalised. From Mr. Abramovich's point of view, the object of the purchase was to relieve pressure on Mr. Berezovsky and Mr. Patarkatsishvili after the former's public row with President Putin, and to avoid any adverse reputational or other consequences for Mr. Abramovich himself - as Mr. Abramovich put it, to take the political heat out of the relations between President Putin and Mr. Berezovsky. In the circumstances it was not surprising that Mr. Abramovich was proposing, and indeed was keen, to inform President Putin of his acquisition. Mr. Abramovich's evidence was that he had not promised President Putin that he would acquire the ORT shares, but only that, if he did buy them, he would inform him[358]. The transcript suggests that the discussion between the three men was amiable.

657. Mr. Rabinowitz also submitted that there was no sufficient explanation as to why, as at the date of the Le Bourget meeting, and prior to the arrest of Mr. Glushkov, Mr. Berezovsky would have been a willing seller of the shares in ORT for $150

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354 It is common ground that the reference to "Vladimir Vladirmirovich" was a reference to Mr. Putin.
355 Berezovsky Day 7, page 49.
356 Abramovich Day 24, page 54.
357 Abramovich Day 24, page 55.
358 Abramovich Day 21, page 107.

million, in circumstances where he had previously refused the sum of $300 million for the same shares and there had been no relevant change in circumstances. I disagree. By November 2000, Mr. Berezovsky was a fugitive from Russia; he had been engaged in a serious and public dispute with President Putin in the media; he had been summoned to appear before the Deputy Prosecutor on 13 November on fraud charges connected with Aeroflot; he had issued an open letter in the press which was published on 15 November to the effect that he was not going to return to Russia to face the charges and had alleged that the Aeroflot case had been revived by President Putin as a result of Mr. Berezovsky's criticisms of him; there was apparently no alternative offer still available from the Russian State to purchase the 49% OIT stake, or, if there was, it was not one that Mr. Patarkatsishvili considered was going to be honoured; Mr. Abramovich was regarded as a man whom both Mr. Berezovsky and Mr. Patarkatsishvili could trust to make the relevant payment; and Mr. Berezovsky and Mr. Patarkatsishvili were in need of funds that were available to them outside Russia. In my judgment all these factors were reasons why Mr. Berezovsky, and indeed Mr. Patarkatsishvili, might well have been extremely keen to sell their ORT stake for $150 million by the time of the Le Bourget meeting: even if Mr. Berezovsky was, as he suggested, keeping his options open at that stage (a proposition which I find difficult to accept) I find that he did not convey that impression to Mr. Abramovich.

658. It is against the background of my finding that, no later than the Le Bourget meeting on 6 December 2000, and in any event prior to the arrest of Mr. Glushkov, Mr. Berezovsky had conveyed the impression to Mr. Abramovich that he, Mr. Berezovsky, had agreed, at least in principle, to sell his and Mr. Patarkatsishvili's ORT stake to Mr. Abramovich for the sum of $150 million, that I have to assess the likelihood of a further meeting having taken place between 7-9 December 2000 at which Mr. Abramovich threatened Mr. Berezovsky in the manner alleged by the latter.

Mr. Berezovsky's allegation that Mr. Glushkov was arrested because of the former's refusal to sign an agreement at Le Bourget

659. In this context it is also necessary to evaluate the evidence relating to an allegation made by Mr. Berezovsky that Mr. Abramovich tried to make him sign up to the deal to sell the ORT shares on the spot, and that it was a direct consequence of Mr. Berezovsky's refusal to do so, that Mr. Glushkov was arrested on the next day, in order to put pressure on Mr. Berezovsky and Mr. Patarkatsishvili to sign the agreement. This allegation was made by Mr. Berezovsky in his written commentary on Box 159 of the Le Bourget transcript. Having referred to a raid by Customs officers on ORT's premises on 5 December, Mr. Berezovsky said:

> "I felt at the time of this meeting that Mr. Abramovich was Mr. Putin's messenger and had been sent to obtain our signatures to the sale of ORT. The Maski-Show raid the day before our meeting with Mr. Abramovich was intended to be a warning to us.
>
> When Mr. Abramovich returned to Russia without our signatures, Mr. Putin realised that he need to increase the

> pressure to make us sell. Consequently, the following day, 7 December, Mr. Glushkov was arrested."

660. I reject this allegation. First, as I have already said, Mr. Abramovich did not have any contractual documents with him that could have been signed by Mr. Berezovsky there and then.

661. Second, by the time of the Le Bourget meeting, the decision to arrest Mr. Glushkov had already been made; on 5 December 2000, the Prosecutor's office had formally drawn up the charges and made the formal decision to arrest Mr. Glushkov and detain him in custody when he appeared for interview on 7 December 2000. Mr. Glushkov's lawyer, Mr. Borovkov confirmed this fact in his evidence in support of Mr. Glushkov's subsequent UK asylum application for asylum. Moreover it was widely known that it was highly likely, if not inevitable, that Mr. Glushkov would be arrested when he attended for interview; Deputy Prosecutor Kolmogorov had announced on television on 30 October 2000 that both Mr. Berezovsky and Mr. Glushkov would be charged with misfeasance relating to the affairs of Aeroflot (which was the event that provoked Mr. Berezovsky's flight to France). On 1 November 2000, after he had left, Mr. Berezovsky was summoned to appear before the Deputy Prosecutor on 13 November 2000. On about 13 November 2000 *Kommersant* announced in the press that the interview was about to happen and that Mr. Berezovsky and Mr. Glushkov would be arrested when they appeared. Mr. Glushkov confirmed this with contacts of his in the State administration[359]. He also said, in his witness statements, both in this action and in his asylum proceedings, that he knew well in advance of 7 December 2000 that he would be arrested and detained that day[360]. Following the announcement on 13 November 2000 that he would be arrested when he attended for interrogation, Mr. Glushkov gave an interview to *Kommersant* on 23 November 2000 in which he stated that once he attended the General Prosecutor's Office for interview "they will hardly let me out". Mr. Goldfarb commented that Mr. Glushkov's vulnerability as a potential hostage was "obvious" from the moment at which Mr. Berezovsky refused to go to Moscow for questioning on 13 November 2000. In her witness statement in this action Dr. Nosova explained that she spent the night before his arrest with Mr. Glushkov, it having been known for some time that he could be arrested. In his commentary on the Le Bourget transcript, Mr. Berezovsky also confirmed that he was aware that Mr. Glushkov had been summoned to appear on 7 December 2000 and said that it was common practice to arrest people on the spot following their interrogation[361]. Mr. Berezovsky had already advised Mr. Glushkov to leave Russia[362]. At the time of Le Bourget he had known for five weeks that Mr. Glushkov was going to be charged and arrested[363].

662. Notwithstanding this, both Mr. Berezovsky and Mr. Glushkov sought in their oral evidence to suggest that Mr. Abramovich was behind the timing of Mr. Glushkov's arrest, arguing that before the Le Bourget meeting the arrest was only "possible" or "probable" and that it was because of Mr. Berezovsky's refusal to sign on the dotted

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359 Glushkov, paragraph 202.
360 Glushkov, paragraph 202.
361 Berezovsky Day 7, pages 26-27
362 Berezovsky Day 7, page 20.
363 Berezovsky Day 7, pages 22-24.

line that Mr. Glushkov was arrested[364]. Mr. Berezovsky pointed to the question which he had asked Mr. Abramovich as recorded at Box 641 as to whether "you reckon they could arrest [Mr. Glushkov]" and Mr. Abramovich's answer as recorded at Box 642, where he said "I don't think they would". This was based on a conversation which Mr. Abramovich had had with a friend of his, Mr. Krasnenker, a former Vice President of Aeroflot, who had also been summoned for interrogation to the prosecutor's office on the same day and who had been told that there would be no arrest on 7 December. Mr. Berezovsky sought to suggest in cross-examination that Mr. Abramovich's answer was disingenuous and that:

> "… after Glushkov was arrested, later on, I didn't have any doubt that Abramovich played game together with Putin and the Prosecutor Office and so, no doubt at all. This one of my key -- turn point."

663. I reject Mr. Berezovsky's assertions as made in his evidence:

i) first that Mr. Glushkov's arrest on 7 December came as a real shock to him: whatever view Mr. Abramovich might have expressed based on Mr. Krasnenker's statement, it was obvious to everyone, including Mr. Glushkov himself, that it was highly probable that he would be arrested when he appeared for interview;

ii) second, that Mr. Glushkov's arrest on 7 December was in any way connected with, or came about as a result of, the fact that no agreement to sell the ORT stake had been signed at the meeting on 6 December:

the evidence showed that the prosecutor's decision to arrest Mr. Glushkov and to detain him in custody had already been taken on 5 December 2000; as Mr. Abramovich said, and I accept, he had not told President Putin that he was meeting with Mr. Berezovsky and Mr. Patarkatsishvili on 6 December; the next time he had any communication with President Putin after the Le Bourget meeting was 9 or 10 December in Moscow, after Mr. Glushkov had been arrested; on that occasion, he believed that he would not have mentioned his meeting, as it would have been more likely that he was discussing the upcoming elections in Chukotka, where Mr. Abramovich was running for governor; he believed he would have only mentioned the meeting to President Putin or Mr. Voloshin in late December 2000 or early January 2001, after the final agreements in relation to ORT had been signed.

iii) that Mr. Abramovich was playing some sort of devious game behind the scenes to procure Mr. Glushkov's arrest in the event of Mr. Berezovsky's refusal to agree to the sale of the ORT stake at the Le Bourget meeting.

There was no evidential basis to suggest that Mr. Abramovich had access to, or any influence over, the Russian Prosecutor; Mr. Abramovich's evidence that he did not even know the Prosecutor General was not challenged. Mr. Voloshin gave clear evidence to the contrary.

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[364] Berezovsky Day 7, page 28; Glushkov Day 11, page 16; Day 11, page 22.

664. I conclude that it reflects poorly on Mr. Berezovsky's credibility that he made the allegation that it was the events at Le Bourget that led to Mr. Glushkov's arrest, or that Mr. Abramovich was somehow involved behind the scenes in the decision to arrest Mr. Glushkov in order to put pressure on Mr. Berezovsky to agree to the sale of the ORT stake.

The alleged meeting at Cap d'Antibes between 7 and 9 December 2000

665. The evidence relating to the alleged meeting at Cap d'Antibes between 7 and 9 December 2000 was extensive, as was the time and length of submission devoted to its minute analysis. It is not appropriate that this judgment should do likewise in relation to its treatment of the issue.

Conclusion in relation to the alleged meeting on 7-9 December 2000

666. My conclusion, having heard all the evidence and considered all the detailed submissions, is that no meeting between Mr. Berezovsky and Mr. Abramovich took place either on the 7, 8 or 9 December 2000 after Mr. Glushkov's arrest, whether at Mr. Berezovsky's chateau at the Cap d'Antibes, or elsewhere, at which the alleged threats were made by Mr. Abramovich to intimidate Mr. Berezovsky into making his decision to sell his shares in ORT.

Mr. Berezovsky's changing case in relation to the date of the alleged meeting

667. Before giving my reasons for this conclusion, I should say something about the manner in which Mr. Berezovsky's case in relation to the date of the alleged meeting at Cap d'Antibes has changed over time. By his own admission in cross-examination, Mr. Berezovsky changed his "recollection" many times about when the meeting took place. His case was originally that it occurred in late December 2000. According to the Patarkatsishvili proofing notes, Mr. Berezovsky told his solicitors in 2007 that Mr. Abramovich came to France on 17 December 2000 and said that if Mr. Berezovsky and Mr. Patarkatsishvili agreed to sell the ORT shares, Mr. Glushkov would be released. In his oral evidence in support of Mr. Glushkov's asylum application, he said that he thought it was around 17 or 18 December[365], although he had also said in paragraph 23 of his witness statement in support of Mr. Glushkov's asylum application that the meeting was at the end of December. In his second witness statement served in response to the summary judgment application in these proceedings, he said that the meeting occurred "towards the end of December 2000" [366], and in his fourth statement served for trial that it was "a couple of weeks after Nikolay's [Mr. Glushkov's] arrest, towards the end of December 2000 and a day or two before Christmas" [367], or "about two weeks after" the Le Bourget meeting[368]. However, the passports and other travel records disclosed by Mr. Berezovsky shortly before trial effectively showed that it was not possible for any meeting to have taken place at Cap d'Antibes with Mr. Abramovich and Mr. Patarkatsishvili on any date from and including 10 December to the end of the month. Thus the records showed that Mr. Berezovsky made various short journeys within Europe between 10 and 16 December, before travelling to England on 16 December and from there to the United

365 "around 18 or 19 December"; "probably about 17/18 December".
366 Berezovsky 2nd witness statement, paragraph 95.
367 Berezovsky 4th witness statement, paragraph 359.
368 Berezovsky 4th witness statement, paragraph 343.

States on 17 December 2000. He attended various press conferences in Washington on the following day, 18 December 2000, and then went skiing at Aspen, Colorado, together with Mr. Voronoff. He returned via Luton on 27 December 2000, before leaving again for Spain on 31 December. In addition, Mr. Patarkatsishvili, who is also alleged to have been present at the meeting with Mr. Abramovich in Cap d'Antibes, can be shown from his travel records to have been in Georgia between 16 December and 25 December 2000.

668. Shortly before the trial, after the appearance of the material summarised above, Mr. Berezovsky served his sixth witness statement suggesting that it was now:

> "… far more likely that the meeting at Cap d'Antibes took place on or in the few days after Mr. Glushkov's arrest on 7 December 2000"[369].

669. At this stage, however, he was still not willing to rule out the possibility that it might have been later in December. It was finally conceded, on 23 September 2011, that the meeting could not have taken place on or after 17 December 2000 and, on 28 October 2011, that it did not happen after 10 December 2000. In his oral evidence, having first suggested the date could have been 7 or 8 December[370], he asserted that it was on 7 December itself, and added some circumstantial detail, said to be based on recollection, that Mr. Abramovich had come down from Paris with Mr. Patarkatsishvili in the latter's aircraft, landed at Marseille and arrived at the house shortly after Mr. Patarkatsishvili[371]. He did not appear to be suggesting that the 9 December was a possible candidate for the alleged meeting. He said:

> "… I still have a little bit of doubts about the 8th. And it means that my recollection almost - not 100% first of all, but almost 100%, that has happened on the 7th."

670. As I have already said, in a case of this sort, involving events which occurred many years ago and which are not necessarily evidenced by documents, it is often not unusual that the recollection of parties or witnesses may change both before and during the trial as to what they believe to be the correct chronology of events. That is particularly so in a case such as the present where the parties' focus intensifies in the final preparations for trial. However, even making every allowance for Mr. Berezovsky in this respect, I found it nonetheless surprising that his recollection of the date of the alleged meeting changed so frequently over time and that the precise date was not fixed in his mind. If the meeting did indeed take the course which he alleged, and threats were made by Mr. Abramovich that Mr. Berezovsky's ORT stake would be expropriated and Mr. Glushkov's detention in jail would continue, unless Mr. Berezovsky agreed to sell his ORT shares, one might with some justification have expected that Mr. Berezovsky would have remembered the date upon which somebody whom, according to Mr. Berezovsky, he considered as a friend, behaved in such an appalling way.

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369 Berezovsky 6th witness statement, paragraph 33. See also Berezovsky 6th witness statement, paragraph 17, "… it appears that the meeting is likely to have taken place earlier" than a few days before Christmas.

370 Berezovsky Day 7, page 57.

371 Berezovsky Day 7, page 70; Day 7, page 72; Day 7, page 73; Day 7, page 83; Day 7, page 85; Day 7, pages 87-88.

671. Whilst such change of case is not by any means determinative, and if I had otherwise been prepared to accept Mr. Berezovsky's case on the evidence, I would have disregarded it, the change is nonetheless relevant to my evaluation of the nature and weight of his evidence and that of his witnesses who also spoke to the date of the meeting.

Reasons for reaching the conclusion that no meeting took place on 7-9 December 2000

672. My reasons for reaching the conclusion that no such meeting as alleged by Mr. Berezovsky took place on 7-9 December 2000 may be summarised as follows.

673. First, in my judgment the evidence, both in the form of documentary records, such as passport stamps and other flight records, as well as that given by Mr. Abramovich and his witnesses, established that Mr. Abramovich left Le Bourget immediately after the meeting on 6 December and flew back to Moscow; that he remained in Moscow from 7-9 December 2000; that he left Moscow for Chukotka on 10 December 2000 where he was campaigning for the gubernatorial election fixed for 24 December 2000; and that he did not leave Russia during the period 7 - 9 December 2000. I refer to some of this evidence by way of example:

i) There were no Russian exit or entry stamps for any date in December after the 6 December 2000 in Mr. Abramovich's passports; the first stamp in Mr. Abramovich's passport showing his departure from Russia was an exit stamp on 2 January 2001, when he left Russia to go skiing in France. That evidence was supported, to a limited extent, by hearsay statements from the Border Guard Service of the FSB.

ii) There were no records of any flight from Moscow to France having been booked on Mr. Abramovich's behalf in the period 7-10 December with the private jet company, Global Jet, which, Mr. Abramovich explained, was the service which he personally used. Although he accepted it was not impossible that he would have used a private jet provided by another company, he said that it was not very likely. Records existed from Global Jet for each of the journeys from Russia taken by Mr. Abramovich which (on his evidence) involved a meeting with Mr. Patarkatsishvili or Mr. Berezovsky in the period October 2000 to May 2001[372].

iii) Rosaviation, the Russian Federal Agency of Air Transport, apparently maintained complete records of private charter flights leaving from and arriving in Moscow in the December 2000 period. Their records showed very few private flights in the period 7-10 December 2000 between Moscow and Nice or Marseille. There was none on 7 December, and the timings of the two flights on 8 and 9 December 2000 did not fit Mr. Berezovsky's case. The flight records also indicated that there were only two private aircraft flights from Moscow to Paris on 7 and 8 December 2000, both of which were operated by Global Jet. Global Jet confirmed that the flight on 7 December 2000 was not booked by or on behalf of Mr. Abramovich; and the flight on 8

[372] These included the meeting in Cap d'Antibes on 6 November 2000; the Le Bourget meeting on 6 December 2000; the trip to the Alps in early January 2001; the meeting in Munich on 10 May 2001; and the meeting in Cologne on 29 May 2001.

December 2000 had on board only Messrs Shvidler and Tenenbaum. Mr. Shvidler's evidence on this point was not challenged.

iv) Mr. Abramovich provided a detailed account of his movements and meetings on each of 7, 8 and 9 December 2000 in his sixth witness statement, and in his oral evidence. In his earlier witness statements, Mr. Abramovich was still addressing Mr. Berezovsky's case that the meeting took place a few days before Christmas, and it was therefore unsurprising that Mr. Abramovich only considered the period 7-9 December in detail in his sixth witness statement served on 26 September 2011, shortly after Mr. Berezovsky's change of case. His evidence as to his movements in this period was corroborated to a certain extent by the evidence given a trial by Mr. Voloshin, and by Mr. Sergei Kapkov, who helped Mr. Abramovich organise his gubernatorial campaign in 2000 given at trial, and was subsequently his assistant at the State Duma.

v) Mr. Voloshin's evidence was that he was visited at his house in Moscow by Mr. Abramovich, by prior appointment, during the evening of 7 December, in the company of Mr. Krasnenker, who was worried that he too, like Mr. Glushkov, was going to be imminently arrested.

vi) Mr. Kapkov's evidence was that, having spoken on the telephone to Mr. Abramovich on 8 December to try and arrange a meeting to discuss the campaign, Mr. Abramovich told him that he would see him the next morning, 9 December at Mr. Abramovich's house, and that meeting duly occurred.

vii) Mr. Abramovich also gave evidence that he attended and voted in the Duma on 8 December 2000[373], at the vote relating to the new national anthem[374] and that he had a meeting with Mr. Zubarov (the Chairman of the Board of the Pension Fund of the Russian Federation) on 8 December 2000 prior to their departure to Chukotka[375], and that he attended a birthday party on the evening of 9 December 2000. He accepted in cross-examination that whilst he remembered that he did not leave Russia during the period, most of the rest of his evidence was based on reconstruction.

674. Mr. Rabinowitz challenged this evidence (which he characterised as "Mr. Abramovich's strenuous attempts to provide an alibi for himself") on a number of grounds. He submitted that Mr. Abramovich's own evidence of his alibi had changed "substantially" over time. In my judgment this criticism was not well-founded. As I have already mentioned, I do not accept that he had initially admitted in his defence a meeting in Cap d'Antibes between 7 and 25 December 2000. Such changes as they were to the timing of events in his evidence were explicable in the light of the change of focus in Mr. Berezovsky's case. Insofar as they were not explicable I have taken such matters into account in my general assessment of Mr. Abramovich's evidence relating to this period.

675. Mr. Rabinowitz further suggested that the evidence relating to the passport stamps and the border authorities was unreliable, and that little weight could be attached to

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373 Abramovich 6th witness statement, paragraph 17.

374 The date of this vote is clear from publicly available records.

375 Abramovich 6th witness statement, paragraph 20; Abramovich Day 22, page 68.

it. That was because, as the FSB Border Guard Service themselves confirmed (and as Mr. Abramovich accepted in cross-examination), passport stamps are not always made when the Russian border is crossed. Mr. Rabinowitz pointed to the fact that there was no Russian exit stamp in Mr. Abramovich's passport on 6 December 2000 (when he left Russia to attend the Le Bourget airport meeting) and that it had not been possible to identify any Russian entry stamp in Mr. Abramovich's passport on 30 May 2001, when it appears he travelled from London to Moscow following the meeting in Cologne on 29 May 2001. He also pointed to examples of missing French stamps in Mr. Abramovich's passports. But whilst it may be the case, that, where one is travelling by private jet, as Mr. Abramovich habitually did, passports are not invariably stamped, in fact an analysis of Mr. Abramovich's passports reveal that they do contain at least one stamp (and in most cases both an entry and exit stamp) for each of the foreign trips that he took in the period October 2000 to May 2001 which involved meetings with Mr. Berezovsky or Mr. Patarkatsishvili. In my judgment it would be a surprising coincidence if in relation to this alleged meeting there was no record whatsoever, either of exit from, or of entry to, Russia in the passport itself or in the border agency's own records. Mr. Rabinowitz's suggestion that the evidence from the FSB Border Guard Service could not be relied upon as "authentic, independent evidence" was somewhat optimistic; there was no evidence to support any suggestion that it had been improperly tailored to suit Mr. Abramovich's case or was not authentic. Whilst I accept that it was not exhaustive or complete, (because it was not clear upon what records it was based), it nonetheless provided some supporting evidence of the fact that Mr. Abramovich had not left Russia during the relevant period.

676. Mr. Rabinowitz submitted that there was no evidence to support the assertion that Rosaviation "maintains complete records of private charter flights leaving from and arriving in Moscow in the December 2000 period" (other than assertions in Skadden's letters seeking information from Rosaviation). He further submitted that, if such complete record were indeed maintained, then Mr. Abramovich should have sought information from Rosaviation in respect of flights from Russia into Lyons airport or Cannes airport, as well as Paris, Marseilles and Nice, as helicopters could have been chartered to have taken Mr. Abramovich from those airports to Cap d'Antibes. Again this criticism was valid so far as it went, but the likelihood was that, although Mr. Abramovich accepted that Lyons or Marseilles (but not Cannes) were possible airports to fly to, if Mr. Abramovich was flying for a day trip to visit Mr. Berezovsky at Cap d'Antibes, he would go to the nearest airport suitable for a jet, namely Nice. Once again, such available evidence as there was supported Mr. Abramovich's account and not Mr. Berezovsky's.

677. Mr. Rabinowitz made similar criticisms of the Global Jet flight records on the grounds that they were not exhaustive and that Mr. Abramovich had not taken steps or made enquiries to secure every possible piece of documentation to evidence his travel arrangements. Again there was nothing in this criticism, given the passage of time. So far as they went, these records clearly supported Mr. Abramovich's case.

678. Mr. Rabinowitz's criticisms of the evidence given by Mr. Abramovich and his witnesses included criticisms that:

i) it was "… implausible that any witness could recall with certainty the exact date upon which a routine event (meeting, party etc) occurred some 10 years after the relevant event";

ii) that, contrary to the impression which he had given in his witness statements, his evidence had been reconstructed;

iii) that such reconstruction was not reliable and indeed was reconstruction of "a dishonest sort".

In my judgment these criticisms were not well founded. Mr. Abramovich's sixth witness statement made it quite clear that he and others had been making enquiries in an attempt to reconstruct what has occurred on the three days of the 7-9 December 2000. The manner in which Mr. Abramovich gave his evidence orally in relation to this topic was carefully considered and he made a careful distinction between what he positively remembered and that which he had reconstructed from information obtained from others or from relevant documents. He, and those witnesses who gave evidence in relation to his movements during this period, were able to reference their direct recollection to events such as Mr. Glushkov's arrest, or, in the case of Mr. Kapkov, his birthday on 10 December and the impressions which he had had, as a 25 year old man, of visiting Mr. Abramovich's home at Sareevo for the first time. I found Mr. Kapkov to be a credible witness notwithstanding his association with Mr. Abramovich. Mr. Voloshin's evidence of the meeting in the evening was likewise entirely credible, as were his reasons for remembering the actual date of the meeting, by reference to his secretary's reconstruction of the telephone log of his calls with Mr. Abramovich, the date of Mr. Glushkov's arrest, and the concern displayed by Mr. Krasnenker, that he too was going to be arrested.

Improbability of Mr. Berezovsky's case on the timing

679. The second reason for concluding that no such meeting took place is the inherent improbability of its timing. The improbability of timing does not just relate to the unlikelihood that Mr. Abramovich would have flown from Moscow for less than a day's visit to Mr. Berezovsky at Cap d'Antibes during Mr. Abramovich's preparations for his campaign in Chukotka. The improbability also extends to the fact that Mr. Berezovsky appears to have decided to sell all the ORT shares on 7 December, before, realistically, any visit by Mr. Abramovich could have occurred.

680. The relevant timing of events can be summarised as follows. Mr. Berezovsky returned from Paris to Cap d'Antibes on the evening of 6 December 2000, immediately after the meeting at Le Bourget[376]. Mr. Glushkov was arrested at about midday Moscow time (10.00 a.m. French time) on 7 December 2000. Mr. Berezovsky was informed of the arrest immediately by Mr. Glushkov's lawyers, who were with him[377]. He then rang Mr. Patarkatsishvili and they concluded that in the light of Mr. Glushkov's arrest "we are now in the corner; we don't have any choice" and that accordingly they had to sell the ORT shares. In his fourth witness statement he put it as follows:

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376 Berezovsky Day 7, page 55.

377 Berezovsky 6th witness statement, paragraph 20; Berezovsky Day 7 pages 55-56.

"358. I gave a telephone interview to the Ekho Moskvy radio station on the day of Nikolay's arrest and expressed my view that President Putin was trying to get at me via those closest to me. However, I announced immediately that I would be giving President Putin what he wanted, namely ORT. In an interview on 7 December 2000 with NTV (which was reported in Russian newspapers), I announced that I was abandoning my plan to transfer ORT into a trust. I explained that I was doing this because the trust would have been placed under incredible pressure by the Kremlin. This was correct, but I also understood that I would have to give up ORT to the State so as to secure Nikolay's release."

681. He then originally, before changing his case as to the date of the alleged meeting with Mr. Abramovich at Cap d'Antibes went on to say:

"359. A couple of weeks after Nikolay's arrest, towards the end of December 2000 and a day or two before Christmas, Mr. Abramovich came to my house in Cap d'Antibes, where I was then living, and met with Badri and me. The meeting was arranged through Badri. My partner, Elena Gorbunova, was also present for the beginning of the meeting.

360 At this meeting, Mr. Abramovich said from the very beginning that he was acting as a messenger in agreeing the terms for the State getting control of ORT. He did not even try to pretend that there was any other agenda. Mr. Abramovich told Badri and me that he had come at the specific request of President Putin and Mr. Voloshin and that Badri and I had to sell our interests in ORT to him immediately.

361. Mr. Abramovich told us that if we did not sell our ORT shares at the price he specified, then Nikolay would be in jail for a very long time. Mr. Abramovich knew well that Nikolay was very sick and in need of constant medical treatment. He added that if Badri and I did not sell the shares, President Putin would seize them in any event and so we might as well sell them. Mr. Abramovich assured me that if I agreed to sell, Nikolay would be released from prison. It was clear to me that we were being threatened. On this basis, and this basis alone, I agreed to sell my interest in ORT."

682. In an interview with the *Moscow Times* on 20 April 2001 he said:

"Glushkov's arrest was a clear signal to me that I have to sell my stake to the state immediately …".

and in a statement posted on his personal website in April 2001 he said:

> "I decided to sell my shares to the state on the day Nikolai Glushkov was arrested".

683. On the evening of 7 December 2000, the day of Mr. Glushkov's arrest, Mr. Berezovsky announced his decision to sell his ORT shares in an interview which he gave to the Moscow radio station *Ekho Moskvy* where he said:

> "… despite all the talk, all the speculation that I sold the shares, or 49% of the shares today belong to me and my partner [Mr. Patarkatsishvili] and in this situation I believe it makes absolutely no sense to struggle against such risks-not risk me personally, but to my friends and family. Therefore I will decide within the next two days what to do with the share is.
>
> Presenter: do you believe at all that you will be able to hold on to them?
>
> No, I simply do not believe that at all. I think the state will get what it wants." [Emphasis supplied.]

In his evidence, Mr. Berezovsky confirmed that in this interview he had indeed said that he had decided to sell the stake[378].

684. When it was put to him in cross-examination that the timing showed that he had already decided to sell, even before any alleged meeting with Mr. Abramovich, Mr. Berezovsky, by reference to the two-day period referred to in his interview with *Ekho Moskvy*, attempted to draw a distinction between:

i) realising, as a result of the arrest of Mr. Glushkov, that he would be forced to sell his shares in ORT and that he would have no choice but to do so; and

ii) being informed by Mr. Abramovich that Mr. Glushkov would only be released if he sold the shares, and then, as a result, making the decision to do so.

The following two passages in his evidence are examples which illustrate this point:

> "A. Mr. Sumption, I present my position in Ekho Moskvy like it is. Definitely I already took my decision to sell ORT shares because they put me in the corner, but I said that I need two days more to take a final decision. It means that I present my position. My understanding that I am in the corner, I was really shocked, and I present my position. But I took the final decision, as it's correctly I gave in my interview, only after we agreed that Mr. Glushkov will be released because I will sell my shares in ORT."[379]

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[378] Berezovsky Day 7, page 56-58

[379] Berezovsky Day 7, page 61.

"A. I just want to say, to tell you, immediately, the same day and so, again, it was so painful for me. On the one hand, I clear understood, my Lady, that I don't have choice after Glushkov was arrested and it's position which I presented but I definitely took some -- how to say? -- some break to understand how it could happen. And only way for me to sell it, even when I said after Glushkov was arrested, "It means that he will be released if I will sell, yes?" This is the point: that he will be released if I sell. And the point what I discussed with Mr. Abramovich, "I accept any price you like and for me the importance is only releasing Glushkov", that's it. And I never changed my understanding of that or changed my position on that."[380]

685. But his evidence, as I found it, was extremely confused as to precisely what he was alleging was the real driver for his decision to sell his shares in ORT. He seemed to accept that Mr. Abramovich could not have influenced his decision to sell, as the following passage demonstrates:

"Q. Yes. Well now, if you decided straight after hearing about Mr. Glushkov's arrest that you were going to have to sell out of ORT, unless Mr. Abramovich was already there in Cap d'Antibes when the news came through, you couldn't have been influenced by anything that he said to you, could you?

A. No. The point is that, as you remember, our discussion with Mr. Abramovich in Cap d'Antibes is the condition to give up is Mr. Glushkov release. And this is a key point because after that I told that I am not interested more in money at all; I am interested in just the condition should be Glushkov should be released.

Q. Mr. Berezovsky, I don't think you're really grappling with the point I'm putting to you. Your case is that you would never have sold out of ORT if it hadn't been for what Mr. Abramovich said to you on this visit to Cap d'Antibes. That's your case, isn't it?

A. My case is absolutely clear: that I would not sell ORT if Glushkov would not be arrested and I would not sell -- I wouldn't sell ORT if Glushkov would not be , and this is the point which I discussed with Mr. Abramovich in Cap d'Antibes. As I told you just now, I don't remember, happened on the 7th, and it means that I decree -- that I decree my position, present my position, when already Abramovich visited me or it's happened later, one day later.

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[380] Berezovsky Day 7, pages 64-65.

Q. Mr. Berezovsky, is it your case or is it not that it was Mr. Abramovich's threats that caused you to decide to sell out of ORT?

A. Definitely, but threat already have done by Putin himself, putting Mr. Glushkov in jail.

Q. Now, the point I'm putting to you is very simple –

A. Abramovich was just messenger of that.

Q. If you decided to sell out of ORT as soon as you heard the news from Mr. Glushkov's lawyer that he'd been arrested, unless Mr. Abramovich was already at Cap d'Antibes, he couldn't possibly have influenced your decision?

A. Definitely he could not influence to my decision but I still have in mind my clear understanding that the condition finally will be if Nikolai Glushkov will be released. I was very emotional, as you understand, that day and I don't remember exactly what happened. But the point is absolutely clear: that condition was to release Glushkov, in spite of I said I don't have choice, but I have arguments to make happen that Glushkov will be released because I had hope that if he will not be released, I will not accept that"[381]. [Emphasis supplied.]

686. He gave a similar answer when cross-examined on paragraph 358 of his fourth witness statement quoted above. He said:

"Q. Now, my question is this, Mr. Berezovsky: you came to that conclusion without needing to have any conversation with Mr. Abramovich?

A. Definitely. On the one hand conclusion was without any conversation with Abramovich. On the other hand, I want to understand condition and I want to send clear message that I don't worry more about money, I worry just about releasing of Nikolai Glushkov. And as far as Abramovich already took mission to be messenger between Putin and me, he is absolutely correct person to present my position to Mr. Putin"[382].

687. I was not impressed with the manner in which Mr. Berezovsky gave his evidence on this point. His pleaded case was very definitely that Mr. Abramovich had threatened him that, unless he agreed to sell his shares in ORT immediately, his interest would be

[381] Berezovsky Day 7, pages 58-59.
[382] Berezovsky Day 7, page 67.

expropriated in any event and Mr. Glushkov would remain in prison for a very long time. His account in cross-examination, however, shifted to one which was more along the lines of Mr. Berezovsky himself, in the course of a negotiation through Mr. Abramovich, seeking to impose the condition of Mr. Glushkov's release, as a precondition to Mr. Berezovsky's agreement to sell. What was clear, as Mr. Berezovsky himself admitted, was that he did not remember exactly what had happened at the alleged meeting. Even if I were to make the assumption in his favour that, because of the two-day consideration point, his case as to the timing of events was not in any way undermined by this evidence, the general veracity of his case on the ORT intimidation issue was indeed seriously undermined.

688. A further point which went to the inherent improbability of the alleged meeting taking place on 7 December (which was Mr. Berezovsky's evidence as to the probable correct date of the meeting), was that, logistically, it was not possible, or, even if possible, it was logistically extremely difficult, for Mr. Abramovich to have flown back to France from Moscow on 7 December in time to meet Mr. Berezovsky and Mr. Patarkatsishvili that afternoon - after lunchtime as Ms. Gorbunova suggested - and to have been back in Moscow that evening when, according to Mr. Abramovich's and Mr. Voloshin's evidence, Mr. Abramovich went to Mr. Voloshin's house in Moscow together with Mr. Krasnenker. Mr. Abramovich's evidence on this topic was not challenged, although Mr. Voloshin's was. Mr. Abramovich's evidence was that there would have been typically a six-hour leadtime from the making of a booking with a jet provider for an unplanned flight until boarding. No suggestion was put to him in cross-examination as to when the decision was allegedly taken by him to return to France, nor was it suggested to him that he had been given instructions by President Putin or Mr. Voloshin to return to secure Mr. Berezovsky's and Mr. Patarkatsishvili's agreement to the sale of the ORT shares. And, on any basis, if Mr. Abramovich had been mandated to communicate threats from the Russian State, it is somewhat surprising that he did not do so at the Le Bourget meeting the day before, since the likelihood of Mr. Glushkov's arrest would have been known to the State prosecutors on that date, given that the decision to arrest him had already been taken.

The evidence of Mr. Berezovsky, Ms. Gorbunova, Mr. Giroud and other witnesses

689. Mr. Rabinowitz submitted that the evidence given by Mr. Berezovsky, Ms. Gorbunova, and Mr. Giroud showed that the alleged meeting at Cap d'Antibes took place after Mr. Glushkov's arrest. I disagree. I did not find the evidence given by these witnesses in relation to the date of the alleged meeting persuasive. I agree with the analysis in Mr. Abramovich's written closing submissions that the most plausible reconstruction of events is that these witnesses remembered an occasion after Mr. Berezovsky's flight from Russia when Mr. Abramovich came to the Chateau de la Garoupe, but that occasion was on 6 November 2000. Given the nature of Mr. Berezovsky's case as to the alleged threats made (threats as to Mr. Glushkov's continued detention), however, it was necessary for Mr. Berezovsky to place the alleged meeting on or after 7 December 2000.

690. Mr. Berezovsky's fourth witness statement attempted to place the meeting after Mr. Glushkov's arrest, on the basis that he said he remembered that the meeting included a discussion about Mr. Glushkov's imprisonment. However, prior to his cross-examination, Mr. Berezovsky had not previously suggested that the meeting with Mr. Abramovich took place on the very same day that Mr. Glushkov was

arrested. Indeed he had made it clear that he could not remember the precise date. But if the two events had indeed occurred on the same day, or even on successive days, I find it surprising that neither Mr. Berezovsky nor Ms. Gorbunova had any recollection of that fact. Nor was Mr. Patarkatsishvili recorded in the briefing notes as having said that the two events happened on the same date or successive days. In his sixth witness statement, Mr. Berezovsky said that he remembered events of emotional significance to him; and that the arrest of Mr. Glushkov was one of the most emotional events of his life. In cross-examination he also described Mr. Abramovich's alleged visit as of "much less" emotional significance than the emotional significance of Mr. Glushkov's arrest, "but also emotional strong" [383]. If the two events had genuinely occurred on the same day, it is highly probable in my view that Mr. Berezovsky would have said so from the start. The excuse which he gave for failing to do so[384] – it was all too much for one day - was not convincing. I quote his answer in full:

> "Q. Now, if these two events happened on the very same day, I suggest that you would always have remembered it and you wouldn't have had to shift about choosing one date after another.
>
> A. I was waiting this your question. It's good question. And I tell you I recollect definitely the arrest of Glushkov; I recollect definitely the meeting with Abramovich in Cap d'Antibes. I did not recollect that it's happened in the same day and I think, again, because it's so emotional, was Nikolai Glushkov arrest, that I did not coincide those two events, I did not put those two events in one day. It was too much for one day. It's the reason why initially I didn't remember that it could happen at the 7th." [Emphasis supplied.]

691. Mr. Berezovsky's belated recollection of Mr. Abramovich arriving just after Mr. Patarkatsishvili on 7 December[385] also had every appearance of being a late invention, following the rebuttal of his earlier case that the meeting occurred shortly before Christmas.

692. Ms. Gorbunova's evidence was originally prepared in order to support the case then being made by Mr. Berezovsky that the meeting occurred shortly before Christmas. It then had to be deployed in support of a meeting on 7 December. In her first witness statement dated 8 July 2011 she said as follows:

> "(ix) The Cap d'Antibes meeting
>
> 37 I understand that Roman now denies that he met with Boris and Badri between 6 December 2000 and Christmas that year.

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383 Berezovsky Day 7, page 86.

384 Which he had clearly prepared – see underlined passages in the quote.

385 Berezovsky Day 7, page 70; Day 7, page 73.

38 I am sure that Roman is wrong about this. Although I do not remember the precise date of the meeting, I can picture it very clearly. The meeting took place before 24 December 2000. I am sure of this because at the time, our Christmas tree had not yet gone up; although I am a Russian Orthodox Christian, and so we celebrate Christmas in January, we put up a Christmas tree in the Chateau de La Garoupe in December in accordance with the French (Catholic) tradition for the staff and other visitors.

39 I remember seeing Roman arrived in the entrance hall of the Chateau, after lunchtime. After Roman arrived, Boris, Badri and I went out with Roman onto the terrace. We would often sit outside at the Chateau, and even during the winter months we kept the terrace doors open. I wanted to go indoors as soon as I had gone out onto the terrace, and was on my way inside, when Boris asked me to stay out. I sat on one corner of the terrace, by the dining table, and the three men sat on the other corner, where there are some chairs. I went inside after around 10 to 15 minutes, as it was cold. I do not know whether the men also went inside later, or whether they remained outside for the rest of the meeting.

40 I had of course come to know Roman very well by this time. From what I observed, Roman behaved very differently at this meeting from how I had seen him behave previously. He used to be respectful towards Boris, almost humble. However, on this visit Roman seemed to be looking down on Boris, as though he now had all the power in the relationship. My impression was that Roman was trying to demonstrate that he was doing Boris a huge favour. I heard the men talking about Boris and Badri's interests in ORT. I recall Roman saying that the government wanted to pay significantly less for the ORT shares than he was going to pay, and that it was only thanks to Roman that they would pay more. I think Roman also said that he was personally paying some of the sale price as he was fed up with the story with Boris and Badri.

41 I remember that after the meeting, Boris was outraged. He told me that Roman had used Nikolay to blackmail Boris and Badri to give up their interests in ORT, and that he was particularly upset that Nikolay had been used. I remember Boris saying that Roman was a bastard."

693. Contrary to the submission made on page 30 of Mr. Berezovsky's First Schedule, this passage did not include a statement that she had heard Mr. Abramovich threatening

the other two men. As was clear from paragraph 41 of that witness statement, she recorded that she had been told about the "blackmail" by Mr. Berezovsky after the meeting. The suggestion that she herself had heard blackmailing threats, and that she understood "the situation was blackmail" was only made for the first time in cross-examination. Ms. Gorbunova, as Mr. Berezovsky's long-time partner, was, understandably, fiercely loyal to him and had clearly discussed the issues in the case with him at length. This clearly affected the nature and quality of her evidence. I was not able to accept her evidence in relation to the issues in dispute. She gave no satisfactory explanation as to why she had not included such allegations in her two witness statements, nor was she able satisfactorily to explain why she had not addressed the point, in such statements, that Mr. Abramovich had allegedly visited Mr. Berezovsky's chateau at Cap d'Antibes either on the day of Mr. Glushkov's arrest or two days thereafter. Her description of the meeting was equally consistent with the analysis that it had taken place on 6 November. Her evidence that she could "remember" Mr. Abramovich not coming to the house on 6 November was not credible. I doubt whether she had actually heard what was being discussed by the three men, or, even if she had, that she had any true recollection of what was said. She gave an unsatisfactory explanation as to the omission from her first statement as to any mention of an alleged trip to the United States referred to in her second witness statement. I could not rely on her evidence as corroborative of Mr. Berezovsky's case on the alleged date of the meeting at Cap d'Antibes.

694. Mr. Richard Giroud was head of Mr. Berezovsky's security team in France in 2000. Mr. Giroud explained how Mr. Berezovsky's security team was on high alert when he moved to France, and that the team was on even higher alert following Mr. Glushkov's arrest. He gave evidence to the effect that there was only one meeting at Cap d'Antibes between Mr. Berezovsky and Mr. Abramovich after his flight from Russia. He had discussed Mr. Abramovich's last visit to Cap d'Antibes with Mr. Berezovsky. Although he said he no longer had any connection with Mr. Berezovsky, I formed the impression that his evidence was shaped by what Mr. Berezovsky had asked him to say. I did not find his evidence, to the effect that the meeting with Mr. Abramovich took place after Mr. Glushkov's arrest, reliable. Despite the increased security measures, neither before, nor after, Mr. Glushkov's arrest were any records kept of visits by VIP visitors to the chateau. At one point he appeared to be suggesting that the meeting took place very shortly before Christmas, which was a previous, but now abandoned, case of Mr. Berezovsky's. His evidence appeared to be based on both a recollection of heightened security at the time of the meeting, and the fact that it was winter, rather than summer. But as Mr. Giroud accepted, Mr. Berezovsky's security would have been heightened from the moment he arrived as a fugitive in France in late October 2000. As Mr. Giroud said, after Mr. Berezovsky had fled Russia "We was [sic] on big alert". Mr. Giroud also said that he recalled that Mr. Berezovsky left France shortly after the meeting, but Mr. Berezovsky's travel records revealed that this was as consistent with a meeting on 6 November as it was with a meeting on or about 7 December. I therefore could not place any real reliance on Mr. Giroud's evidence as corroboration of Mr. Berezovsky's assertion as to the date of the Cap d'Antibes meeting.

695. The evidence of third parties such as Mr. Goldfarb, Mr. Voronoff, Mr. Pompadur and Mr. Dubov as to what they had subsequently been told by Mr. Berezovsky about the alleged threats made by Mr. Abramovich did not provide any satisfactory supporting

evidence of his case as to the date of the Cap d'Antibes meeting. Indeed in certain respects passages in their evidence undermined his case on this issue. Moreover, even to the extent that such evidence corroborated Mr. Berezovsky's case, it was not possible to attach any serious weight to it, given that it was wholly derived from what Mr. Berezovsky had allegedly told the witnesses, in some cases some time after the event (and, notably, not immediately), but, invariably, also from his discussions with them about the matter over the years.

696. In this context I should, however, refer to the evidence given by Dr. Nosova in relation to this topic. On the evening of 18 October 2011 (the night before she gave her evidence) she produced a fresh witness statement in which she claimed, for the very first time, to "recall" having been told by Mr. Patarkatsishvili, between seven and ten days after Mr. Glushkov's arrest (i.e. between 14 and 16 December 2000[386]) over breakfast at the Georges V Hotel in Paris about threats being made at a meeting "in France at Boris's place". Dr. Nosova had sat in Court throughout Mr. Berezovsky's evidence and had clearly observed from his cross-examination the difficulties which he faced in attempting to place the Cap d'Antibes meeting in the timeframe 7-9 December 2000. The inference which I drew was that she made up this latest aspect of her evidence, having trawled through her travel records, and the relevant information about her and Mr. Patarkatsishvili's movements, in order to ascertain the earliest date on which she could say that he had told her about the meeting. It was notable that no such suggestion had been made by her previously at a time when Mr. Berezovsky was claiming that the meeting had happened shortly before Christmas, or possibly between two trips which he had made to the United States between 16 and 26 December (in relation to which her recent statement fixing her alleged conversation at a breakfast meeting with Mr. Patarkatsishvili in the timeframe 13-16 December would not have been helpful). Moreover her recent statement was not consistent with her earlier witness statement, in which she had effectively (by reference to other evidence) said that she was told by Mr. Patarkatsishvili about the meeting in January 2001. Nor was her account consistent with what Mr. Patarkatsishvili had told Mr. Berezovsky's solicitors in June 2005 in her presence, as recorded in the briefing notes; in those notes he was not recorded as mentioning any threat by Mr. Abramovich, and asserted that it was not within Mr. Abramovich's power to procure Mr. Glushkov's release. She did not dispute that Mr. Patarkatsishvili had said what he is recorded as saying in those notes, but she tried to suggest that he was misleading Mr. Berezovsky's solicitors for fear that his words would leak out and become known to Mr. Abramovich.

697. I have summarised my views as to Dr. Nosova's credibility at section VII above. In all the circumstances I simply do not accept her evidence as to what Mr. Patarkatsishvili was alleged to have told her over breakfast at the Georges V Hotel.

Mr. Patarkatsishvili's interviews

698. Mr. Rabinowitz submitted that the notes of the interviews with Mr. Patarkatsishvili also supported Mr. Berezovsky's case that a meeting took place in Cap d'Antibes between the three men after Mr. Glushkov's arrest. In my judgment, on a proper

386 Nosova 3rd witness statement paragraph 4.

analysis, the notes and draft proofs provided very little support for Mr. Berezovsky's case, and, to the extent to which they did so, they are not reliable.

699. The earlier notes, and draft proof, based on the interview with Mr. Patarkatsishvili which took place on 29 June 2005, did not support the allegation that a meeting took place at Cap d'Antibes in the course of which Mr. Abramovich made threats as to the continued detention of Mr. Glushkov or the expropriation of the ORT stake. For example, the final version of the draft proof based on the June interview notes of Mr. Lankshear and Mr. Stephenson, stated as follows:

> "As time passed it was clear that we would not be going back to Moscow. Many agreements were breached by the government. We did not trust them anymore. We needed a trusted man. We received an invitation from RA to meet. A meeting took place in Paris between myself, BB and RA. The meeting in Paris took place at the Le Fouquet restaurant in the Champs Elysees. I even recall where we sat: the third table from the left.
>
> RA: 'For your sake, I will buy your shares and give them to the government.'
>
> He offered $150 million. Previously we had had an agreement with RA to give $50 million to the election campaign of Putin. Our share was therefore $25 million to this cause, which RA paid. Taking into account this $25 million, the price offered for ORT was $175 million.
>
> Prior to the Paris meeting with RA, BB and I had decided that we were prepared to give away our shares for nothing in exchange for the release of NG. His freedom was our overriding concern. We therefore did not hesitate when RA offered to pay $150 million on the basis that NG would be released. Evidently it was not within RA's power to release NG. Voloshin himself had promised this to me in a personal conversation I had with him later. Although I believed them, BB on the other hand took some persuading as he was concerned that he would be deceived.
>
> The release of NG would be arranged through Voloshin. The basis of the agreement was that RA would buy our shares and give them to the government, and in turn NG would be released on the grounds of his ill health.
>
> The price for our ORT shares had come down from $300 million to $150 million. This was consistent with the practice of the Kremlin. It was usual for the Kremlin to discount an offer by 300%, if its first offer was refused. We were treated preferentially as our discount was only 50%!"

700. This account did not mention a meeting at Cap d'Antibes in the aftermath of Mr. Glushkov's arrest, nor did it refer to Mr. Abramovich as a person who had made any threats. But it did make clear that Mr. Berezovsky and Mr. Patarkatsishvili had already decided to sell their shares, prior to any meeting with Mr. Abramovich. Mr. Abramovich was described as a "trusted man": not as a threatening blackmailer. Mr. Berezovsky and Mr. Patarkatsishvili were said not to have hesitated when he offered to pay $150 million, albeit "on the basis that NG would be released". However the draft proof made it clear that Mr. Patarkatsishvili thought that it was not within Mr. Abramovich's power to secure Mr. Glushkov's release. It records a statement by Mr. Patarkatsishvili that it was Mr. Voloshin himself, who in a later meeting "… had promised this to me [i.e. Mr. Patarkatsishvili] in a personal conversation I had with him later" [Emphasis supplied]. I deal with the allegation about a later meeting with Mr. Voloshin below, but the point for present purposes is that Mr. Patarkatsishvili was not apparently suggesting that such a promise had emanated from Mr. Abramovich.

701. Moreover, the evidence, such as it was, both from Mr. Berezovsky and Mr. Patarkatsishvili about alleged threats or promises from, or meetings with, Mr. Voloshin about the release of Mr. Glushkov, was mutually inconsistent and changed over time. By way of example:

i) In his first statement in January 2002, made in support of his UK asylum application, Mr. Berezovsky said:

> "It was made clear to me by Russian authorities that Glushkov would be released in exchange for my stake in ORT. Indeed, I was promised this – by none other than Voloshin";
>
> "… this tactic has already been used against [me] by none other than Voloshin, who personally told me that my good friend Glushkov would be released if I surrendered my ORT shares."[387] [Emphasis supplied][388]

The point to be emphasised here is that Mr. Berezovsky did not suggest that Mr. Abramovich had conveyed this message, even though in a subsequent paragraph, where Mr. Berezovsky referred to an article in *Kommersant*, Mr. Abramovich was referred to as a "go-between". On the contrary, Mr. Berezovsky was asserting a personal conversation as between him and Mr. Voloshin in which the promise had been given. When Mr. Berezovsky, in his second statement, made clarifications to his first statement, there was likewise no mention of Mr. Abramovich having conveyed the message.

ii) It was not until Mr. Berezovsky made his witness statement in support of Mr. Glushkov's asylum application in February 2007 that he said that, although the offer was made by Mr. Voloshin,

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387 At paragraph 219(p)

388 At paragraph 148.

"… to avoid any misunderstanding I should clarify that Voloshin's offer itself was communicated by Roman Abramovich".[389]

In this statement Mr. Berezovsky said "this was at the end of December 2000". By this time proceedings against Mr. Abramovich were in contemplation by Mr. Berezovsky.

iii) In an interview given by Mr. Patarkatsishvili, published in *Kommersant* on 4 July 2001, Mr. Patarkatsishvili was reported as saying, in connection with attempts to pressurise Mr. Berezovsky:

"GEVORKIAN. You mentioned attempts to pressure Berezovsky. What could the actual motif behind it be?

PATARKATSISHVILI. Boris Abramovich and I underwent all sorts of pressure, before and after Glushkov's arrest. They tried to bargain the Aeroflot case closure for the shares of ORT television. We agreed to it when Glushkov was arrested. We sold our shares. Alexander Voloshin promised that Glushkov would be released, but he cheated us.

GEVORKIAN. Whom did he give that promise to?

PATARKATSISHVILI. To me.

GEVORKIAN. In person or by phone?

PATARKATSISHVILI. He related it to me through a person whom both Voloshin and I found trustworthy."

iv) It was assumed by Mr. Voloshin that the reference to "… a person whom both Mr. Voloshin and I found trustworthy" was in fact Mr. Abramovich. This account was quite different from the story given to Mr. Berezovsky's solicitors in 2005 when the suggestion was made that Mr. Patarkatsishvili himself had personally had a meeting with Mr. Voloshin;

v) Mr. Patarkatsishvili went on in the *Kommersant* interview to describe negotiations which, when Mr. Glushkov was not released at the end of December, he conducted between January and April 2001 with a number of government officials and emissaries of President Putin, including Mr. Sergei Ivanov in order to secure Mr. Glushkov's release. These negotiations were also referred to by Mr. Glushkov in his asylum application and by Dr. Nosova in the course of her evidence at trial[390]. There are two points to be made about these negotiations: first, they did not involve Mr. Abramovich in any way whatsoever; and second, and, interestingly, the terms in which Mr. Patarkatsishvili described them was that, in return for the release of Mr. Glushkov, the Kremlin insisted that Mr. Berezovsky and

389 At paragraph 23.
390 Day 12, page 74.

Mr. Patarkatsishvili should sell their entire media empire, including all broadcasting and television channels (such as NTV and TV-6) and newspapers, and that Mr. Berezovsky should "quit political activity".

702. Mr. Rabinowitz also relied on notes made by Mr. Berezovsky's solicitors of meetings with Mr. Patarkatsishvili in June and November 2007, respectively in England and Israel. However, as I have already decided, little weight can be attached to these as supporting Mr. Berezovsky's case, even when the wording of the notes might appear to do so. Mr. Berezovsky was an active participant at all the meetings and had already started his action against Mr. Abramovich. His solicitors would no doubt have been looking for evidence which supported his case. Neither Ms. Duncan nor Mr. McKim spoke Russian and there was no independent translator present. They were therefore unable to verify the accuracy of the apparent translations or explanations given by Mr. Berezovsky of Mr. Patarkatsishvili's statements. Nor were they in a position to understand what Mr. Berezovsky and Mr. Patarkatsishvili were saying to each other.

703. Amongst other notes, Mr. Rabinowitz relied upon passages in Mr. Stephenson's notes taken on 11 June 2007:

"le Bourget airport/Sibneft

Roman last time met in chateau

airport in Germany"

and a side note on the previous page, which, next to a reference about the Paris meeting, read:

"Badri, BB, RA.

Before Chateau in BB house

After Nikolai in prison –

7 December – 25 December";

Mr. Rabinowitz also relied on passages in Ms. Duncan's note of meetings with Mr. Patarkatsishvili on 29-30 November 2007, which read:

"BB Glushkov arrested Dec.

17/12 RA came to France – arranged by Badri

Said sell shares in ORT

Said he came on order of Voloshin & Putin –said if we don't sell, Putin would take anyway

I raised issue of Nikolai, he in jail. He said if we settle deal Glushkov released

Badri settled how much

AP BP 1st meeting in France

BP called him and arranged meeting

We understood we need to meet – both sides.

Thought he wld raise Sibneft but he didn't

....

Antibes House – RA gave us info from Voloshin & Putin. If you guys don't give them the sh's NG in jail a long time. RA said NG v sick, I'm sorry about this - we decided to give shares.

Talked about price – agreed RA said.

…

2 meetings with RA – Fouquet + Antibes – threat made

Fouquet – also meeting abt ORT, NG

Fouquet – BP at George V – met at Fouquet v. beautiful day.

Spring or summer.

Antibes – v. short time after NG arrested (17/12)"

Mr. McKim, one of the solicitors who attended the meeting in Tel Aviv, recalled that there was disagreement between Mr. Patarkatsishvili and Mr. Berezovsky as to whether an alleged meeting took place in Le Fouquet in Paris or at Cap d'Antibes[391].

704. I cannot place any real weight on these notes as corroborative evidence supporting Mr. Berezovsky's case, such as to persuade me to reject Mr. Abramovich's evidence that no meeting took place at Cap d'Antibes in the period 7-9 December 2000, supported as it was by travel records and other evidence. Nor, in the light of his evidence and that of Mr. Voloshin, am I persuaded to attach any weight to the statements in the notes that suggest that threats were made by Mr. Abramovich on the instructions of President Putin and Mr. Voloshin. Given the circumstances in which the notes were made, and in particular the presence of Mr. Berezovsky at the 2007 meetings they are likely to have been self-serving. Their unreliability is compounded by the successive changes in Mr. Berezovsky's case on this issue, as well as the different accounts apparently given by Mr. Patarkatsishvili of his communications with Mr. Voloshin.

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391 McKim, Day 16, pages 67-68.

The alleged end of the friendship between Mr. Berezovsky and Mr. Abramovich following the alleged Cap d'Antibes meeting

705. Mr. Rabinowitz submitted that what he referred to as "the sudden and dramatic end" of the two men's friendship at the end of 2000 or early 2001, strongly supported Mr. Berezovsky's case both in relation to the ORT intimidation issue, and more generally in relation to both Sibneft and RUSAL. He submitted that Mr. Abramovich had no coherent explanation for why his friendship with Mr. Berezovsky ended exactly at the time of the alleged Cap d'Antibes meeting, which was marked by him not being invited to Mr. Berezovsky's birthday party in January 2001, for the first time since 1996, and by the fact that the men (who had plainly been close) never met again, nor had a proper conversation with each other thereafter.

706. Mr. Berezovsky's evidence was that the Cap d'Antibes meeting was followed by a complete breakdown of relations with Mr. Abramovich, explicable only by his treacherous behaviour at that meeting. He described the end of their friendship in the following way:

> "In view of our previous friendship and trusted business relationship, I felt hurt and betrayed by Mr. Abramovich. I was sure he had lied to me when he had told me at Le Bourget that he did not expect Nikolay to be arrested, and it was clear to me that in acting as President Putin's messenger in the ORT intimidation he was acting for his own benefit – strengthening his own position in the Kremlin, while hurting me, his partner, and at the same time making money out of it. Over the years, a number of people close to me had warned me not to trust Mr. Abramovich – Badri, Nikolay, Dr. Nosova, my partner Elena, George Soros (through Alex Goldfarb) – but I had paid no attention to them. I saw now that I had been wrong to trust Mr. Abramovich. At the conclusion of the meeting, I made it clear to him that I knew he was blackmailing me, and that he had betrayed me. I told him 'It's the last time that I will meet you Roma, I never want to see you again'. The next time I spoke to him was seven years later, when I personally served these proceedings on him at an Hermes shop in London (and he sought to avoid the service of proceedings)"[392].

707. Having heard the evidence which both men gave about the end of their friendship, I conclude that such evidence does not support Mr. Berezovsky's account of the alleged Cap d'Antibes meeting, and that his description was not only exaggerated but also inaccurate. I accept Mr. Abramovich's evidence that their friendship did not stop or cease at any single point of time, but rather gradually declined. I accept as realistic his cynical comment that his friendship with Mr. Berezovsky had been based on Mr. Abramovich's payouts and that, at the point when the final payout had been agreed, Mr. Berezovsky's interest in him "was gone".

708. Thus even before December 2000, the relationship between the two men had cooled. As Mr. Abramovich explained, during 2000 Mr. Berezovsky's influence in Russia

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[392] Berezovsky 4, paragraph 364.

declined. Mr. Berezovsky was no longer of active use to Mr. Abramovich. After the meeting at the Dorchester Hotel in March 2000, Mr. Abramovich saw less of Mr. Berezovsky and Mr. Patarkatsishvili than he had previously done. Mr. Berezovsky was spending increasing amounts of time out of Russia, even before Mr. Berezovsky's public dispute with President Putin in relation to various issues including, in particular, the handling of the *Kursk* disaster in August 2000. Mr. Abramovich strongly disapproved of Mr. Berezovsky's response to the disaster, which caused him to question their relationship which thereafter declined further. Mr. Abramovich described this decline as follows in his 3rd witness statement:

> "202. By way of background, I should explain that my relationship with Mr. Berezovsky changed after the *Kursk* tragedy of August 2000. In my view, he took an overtly hostile and one-sided stance against the country's leadership as a means of promoting himself. I believed, and still believe, that Mr. Berezovsky was wrong to have used the media, which he controlled, to exploit a public tragedy of that sort to further his own political agenda against the government. I made clear to Mr. Berezovsky what my views were. I did not openly disagree with Mr. Berezovsky very often and this fact alone caused some disturbance in our relationship. After that, we almost stopped meeting in person and I increasingly dealt with him through Mr. Patarkatsishvili."

709. By late 2000, Mr. Berezovsky had fled Russia and there was even less occasion for the two men to meet. Thereafter, Mr. Berezovsky became an increasingly vocal critic of President Putin and the two men grew further apart politically. Ms. Gorbunova's evidence, which I have concluded related to a meeting at Mr. Berezovsky's chateau at Cap d'Antibes on 6 November 2000, can be accepted insofar as it spoke of her appreciation of a change in the dynamic of the relationship between the two men. It is not difficult to see why, by November/December 2000, relations between the two men were chilly: on the one hand, Mr. Abramovich was frustrated by what he described as Mr. Berezovsky's "irrational behaviour"; as a fugitive from Russia, Mr. Berezovsky was of no use to Mr. Abramovich politically, at least for the time being, whilst the present regime remained in power, and indeed had become an expensive liability; on the other hand, Mr. Berezovsky, as an exile, was no doubt angered or upset by what he would have perceived as the younger man's disloyalty and presumption in expressing disapproval of Mr. Berezovsky's public criticism of President Putin. The appreciation that his protégé no longer had need of him may have wounded his pride. As Mr. Abramovich described, after the *Kursk* disaster, a number of former acquaintances of Mr. Berezovsky also stopped communicating with him; Mr. Berezovsky would not have been pleased that Mr. Abramovich had given similar indications of having become disaffected. These would have been more than sufficient reasons for Mr. Berezovsky's decision not to have invited Mr. Abramovich to his birthday party on 23 January 2001.

710. I accept Mr. Abramovich's evidence, supported by the evidence of his former chef, Mr. Christian Sponring, and travel records, that the two men did in fact meet again

shortly afterwards, together with Mr. Patarkatsishvili, at the Mégève heliport on 10 January 2001. I deal with the subject matter of the meeting below in the context of the Sibneft intimidation issue. I accept that it was a meeting conducted on amicable, or reasonably amicable, terms.

711. The next day, on 11 January 2001 Mr. Berezovsky gave an interview in *Kommersant* in which he said: "I trust Mr. Abramovich as a business partner": a surprising description of someone who allegedly only a month earlier had blackmailed Mr. Berezovsky into selling shares with the threat of Mr. Glushkov's continued detention. Interestingly, he also said that, having originally offered to sell the ORT shares to President Putin right after the election, he had returned to the question of the sale of the shares "earlier than … a month ago", as soon as he had realised that the trust company, which he had proposed to create, would not be able to perform its functions and would not be able to preserve ORT's independence. Mr. Berezovsky's explanation in cross-examination that he did not:

> "… want to put Abramovich as my enemy publicly because I want to give him space to deliver what we discuss to deliver"

was not convincing; he could simply have referred to Mr. Abramovich as his business partner, without expressing the sentiment that he trusted him.

712. The fact that, as I find, Mr. Abramovich continued to have a good relationship with Mr. Patarkatsishvili up until the time of the latter's death in February 2008, was also inconsistent with Mr. Berezovsky's case in relation to the ORT intimidation issue. Mr. Patarkatsishvili was also a friend of Mr. Glushkov, albeit not such a close friend as Mr. Berezovsky, and one might have expected him to have adopted a similar attitude to Mr. Abramovich, and cut off friendly relations with him, had the latter indeed made the alleged threats in relation to Mr. Glushkov's continued detention at a Cap d'Antibes meeting on 7 December 2000. On the contrary, the two men continued to see each other and Mr. Abramovich visited Mr. Patarkatsishvili in Georgia. For example, as Mr. Abramovich recounted, having been "stunned" to read disparaging comments made in press interview by Mr. Berezovsky in December 2002, to the effect that he "did not know" Mr. Abramovich, he arranged to meet Mr. Patarkatsishvili in Georgia in February 2003. After the two men had discussed Mr. Glushkov, Mr. Abramovich raised the topic of Mr. Berezovsky's disparaging remarks. I quote the evidence given by Mr. Abramovich in his fourth witness statement on this issue in full, because it provides an insight into what was probably the explanation for what became the enmity between the two men. It is not necessary for me to express any view, and I make no judgment, as to whether Mr. Abramovich was justified in the view that Mr. Berezovsky had betrayed him:

> "Then I asked Mr. Patarkatsishvili about what happened with Mr. Berezovsky and why he suddenly had such a negative reaction to me. I had been thinking all this time that I had pleased him and had ensured that both he and Mr. Patarkatsishvili had enough income to allow them to pursue their various interests outside Russia and enjoy life. Mr. Patarkatsishvili had been declared the richest man in Georgia. Suddenly, when reading the interview in December, the idea presented itself for the first time that Mr. Berezovsky

> could be unhappy about something, and that made a strong impression on me. I had been so sure that Mr. Berezovsky would think and speak well of me so his interview had shocked me. I explained my feelings to Mr. Patarkatsishvili and he told me not to worry and pay no attention. He said that Mr. Berezovsky was losing sleep over the capitalisation of Sibneft and was now wishing that he could be part of it. He just said that Mr. Berezovsky was probably just jealous and could not cope with the fact that I might be richer than him. He assured me that, so far as he was concerned, given the situation that Mr. Patarkatsishvili and Mr. Berezovsky found themselves at the time, they had made very good money and were therefore very happy. I felt that Mr. Patarkatsishvili took my side. It was our first open conversation after the 'final payment' deal.
>
> We had similar conversations later, including in 2006 when he asked for my help in the 'divorce' from Mr. Berezovsky. However, this conversation in Georgia was the first time that Mr. Patarkatsishvili said that Mr. Berezovsky was wrong and told that it was 'Boris being Boris', and 'you can't do anything about it'. I still felt uncomfortable, as I did not want to believe that Mr. Berezovsky thought negatively of me; moreover, it was unjustified. Because of Mr. Berezovsky's obsession with publicity, others might now believe that I had somehow deceived Mr. Berezovsky. That feeling was particularly unpleasant considering the fact that I had paid him in cash an amount that was absolutely unheard of at the time and had made him apparently happy at the time. I was the person who had been betrayed."

713. I cannot accept Dr. Nosova's evidence that the continuing contact between Mr. Patarkatsishvili and Mr. Abramovich was the result of attempts on Mr. Patarkatsishvili's part to negotiate some sort of settlement with Mr. Abramovich. She suggested that in 2004 he was conducting negotiations with Mr. Patarkatsishvili with regards to him paying compensation for selling Sibneft at an artificially understated value; and that in June 2005 and early 2006 the two men were negotiating some sort of settlement in relation to Sibneft and RUSAL. Mr. Berezovsky made allegations to similar effect and attempted to suggest that Mr. Patarkatsishvili was "playing a game" against "the enemy", Mr. Abramovich, and that, whilst the relations between the two men were outwardly friendly, the reality was that both men were behaving in a "perfectly, perfectly, perfectly hypocritical" manner. I accept Mr. Abramovich's evidence to the effect that there were no such negotiations and that he maintained a genuinely friendly relationship with Mr. Patarkatsishvili after the final payment (to which I refer below). This was supported by the evidence of Mr. Anisimov, who knew Mr. Patarkatsishvili from 1999, and who said that Mr. Patarkatsishvili "always spoke very nicely, very kindly and favourably about Mr. Abramovich"[393].

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[393] Anisimov Day 31, page 99.

The funding of ORT's liabilities by Mr. Abramovich

714. Another aspect of the evidence which supported Mr. Abramovich's case, and undermines that of Mr. Berezovsky (to the effect that the sale of the ORT stake was only decided upon after the alleged threats made by Mr. Abramovich at the alleged Cap d'Antibes meeting on 7 December 2000), was that Mr. Abramovich had started to pay for ORT's deficit from as early as October 2000. Thus the Bolshoi Balance, under Tab "2000 total, cash incl. monthly" showed a payment of cash out under the heading "ORT CASH" of $1.6 million in October 2000 and $2 million in December 2000.

Alleged control of ORT by the Russian State after the sale of the 49% stake

715. In support of his case that Mr. Abramovich had acted as a tool of the Russian State, Mr. Berezovsky suggested that, following Mr. Abramovich's acquisition of the 49% ORT stake, the State gained full control of ORT. Mr. Abramovich's evidence was that at no time had he ceded control over his ORT stake to the Russian government; he pointed out in his oral evidence that the government had always had a 51% controlling stake in ORT, and that the director general appointed by Mr. Berezovsky, Mr. Ernst, remained at ORT to this day. It was also suggested to Mr. Abramovich, by reference to certain press reports in early 2001, that he had not appointed any representatives to the ORT board but had allowed the government to make all the appointments. However later press reports, to which Mr. Abramovich was not taken, showed that a general shareholders meeting originally scheduled for 29 June 2001 was postponed, because the proposed board, which was being put forward for election, made up entirely of government officials "did not reflect the essence of public television", according to a statement made by Press Minister, Mr. Lesin, at the time. Thereafter, on 7 September 2001, a new Board of Directors was elected which included independent cultural figures, such as the film director Nikita Mikhalkov and the Hermitage Museum director, Mikhail Piotrovsky, in the majority, and with State officials in the minority. Accordingly, Mr. Berezovsky could place no reliance on this point in support of his case.

Conclusion in relation to the ORT intimidation issue

716. I conclude that, whilst Mr. Berezovsky did not sign the share sale agreement transferring his stake to an Abramovich company until 29 December 2000 (and the agreement transferring the LogoVAZ ORT stake was not signed until 28 December 2000), and whilst he may not have been contractually bound until late December, he certainly had in contemplation a sale to Mr. Abramovich from October/early November 2000, if not earlier. Once he and Mr. Glushkov had been summoned to appear before the public prosecutor in connection with the Aeroflot investigation, it was clear that the writing was on the wall, and that both men faced the overwhelming likelihood of arrest if they remained in Russia. It may be that Mr. Berezovsky personally did not make his final decision to sell until he heard of the arrest of Mr. Glushkov. It matters not. But I reject Mr. Berezovsky's case that he only decided to sell his stake in ORT at the alleged meeting in Cap d'Antibes on 7, 8 or 9 December as a result of threats made by Mr. Abramovich in relation to the continued detention Mr. Glushkov or the expropriation of the 49% ORT stake, or as a result of any promise by him that Mr. Glushkov would be released.

717. In reaching this conclusion, and save to the limited extent addressed above in relation to the Kremlin meetings in August 2000, I make no findings as to what pressures, if any, may have been imposed upon Mr. Berezovsky or Mr. Patarkatsishvili by representatives of the Russian State to persuade them to divest themselves of their media interests or to refrain from public criticism of the regime. All that is necessary for the purposes of this case is my determination that Mr. Abramovich himself did not communicate the threats alleged by Mr. Berezovsky.

Section XI - Issue A3: The Sibneft intimidation issue

Introduction

718. This section of the judgment addresses Issue A3 of the liability issues, as I have defined them, namely:

> "If Mr. Berezovsky had an interest in Sibneft, did Mr. Abramovich threaten Mr. Berezovsky that, unless Mr. Berezovsky sold that interest to him or his nominee, Mr. Abramovich would take steps to ensure that:
>
> i) his interest in Sibneft would be expropriated by the Russian state; and/or
>
> ii) Mr. Glushkov would be detained in prison for an extended period?"

For the sake of brevity I shall refer to this issue as the "Sibneft intimidation issue".

719. In the light of my conclusion in relation to Issue A1, Issue A3 does not strictly arise for determination. But, although the issue is strictly hypothetical in the light of my decision that Mr. Berezovsky in fact had no interest in Sibneft, which could have been expropriated, it is nonetheless appropriate that I should express my conclusions in relation to the Sibneft intimidation issue. This is because both Mr. Berezovsky and Mr. Abramovich placed considerable weight on such evidence, not only in support of their general submissions as to the credibility of the two men and the various witnesses, but also in support of their respective substantive cases in relation to the existence or otherwise of the alleged 1995 and 1996 Agreements. As Mr. Rabinowitz submitted, if indeed Mr. Abramovich had made threats to the effect that Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft "interests" would be expropriated if they did not sell to Mr. Abramovich at the price he demanded, that would strongly support Mr. Berezovsky's case that the latter did indeed have such an interest. Secondly, if, as Mr. Berezovsky contended, the only explanation for the sum of $1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili in the circumstances described below was that the sum represented the sale price of Mr. Berezovsky's and Mr. Patarkatsishvili Sibneft interests, that also would necessarily support Mr. Berezovsky's case.

720. I also consider that it is appropriate to address the issue because of the very serious nature of the allegations that have been made by Mr. Berezovsky. If indeed I were of the view, having read and heard all the evidence, that Mr. Abramovich had intimidated or blackmailed Mr. Berezovsky, whether in the manner alleged or

otherwise, it would be right that I should say so, notwithstanding that, theoretically, the issue of intimidation/blackmail might not have been relevant to my ultimate determination of the case. Conversely, if I were not of that view, it would be fair to Mr. Abramovich that I should likewise express my conclusion.

The issue

721. This issue, as fully articulated in the Agreed List of Issues, is as follows:

> "7. Did Mr. Abramovich make threats to Mr. Berezovsky and Mr. Patarkatsishvili (relayed by Mr. Patarkatsishvili to Mr. Berezovsky), with the intention of causing them to dispose of their interests in Sibneft? In particular:
>
> (1) Did Mr. Abramovich threaten in the course of meetings in Moscow with Mr. Patarkatsishvili from about August 2000 to May 2001 that he would use his influence with the Putin regime to seek to cause Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft to be expropriated unless they sold their interests to him?
>
> (2) Did Mr. Abramovich threaten in the course of a meeting at Munich or Cologne airport in May 2001 that Mr. Abramovich would use his influence within the Putin regime to seek to ensure that Mr. Glushkov would not be released from prison?
>
> 8. If the threats alleged in paragraph 7 were made, did they in fact coerce Mr. Berezovsky into disposing of his alleged rights in relation to Sibneft or did he do so for other reasons?"

Executive summary of my conclusions in relation to the Sibneft intimidation issue

722. In summary, my conclusion in relation to the Sibneft intimidation issue is that Mr. Abramovich did not make either express or implied threats to Mr. Berezovsky and Mr. Patarkatsishvili, with the intention of intimidating them to dispose of their alleged interests in Sibneft. In particular, Mr. Abramovich did not threaten, in the course of meetings in Moscow with Mr. Patarkatsishvili from about August 2000 to May 2001, that he would use his influence with the Putin regime to seek to cause Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft to be expropriated unless they sold their interests to him; nor, in the course of meetings at Munich and Cologne airport in May 2001, did Mr. Abramovich threaten that he would use his influence within the Putin regime to seek to ensure that Mr. Glushkov would not be released from prison. I also conclude that the sum of $1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili did not represent the sale price of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged Sibneft interest, but

rather was a final lump sum payment in order to discharge what Mr. Abramovich regarded as his *krysha* obligations.

723. In the circumstances, and given my conclusion that Mr. Berezovsky had no such interest, the issue articulated in paragraph 8 of the Agreed List of Issues (i.e. whether the threats made coerced Mr. Berezovsky into disposing of his alleged Sibneft interest) does not arise for determination.

Relationship with the ORT intimidation issue

724. As I have already explained, the ORT intimidation issue had implications for the Sibneft intimidation issue, and for that reason was closely connected with it, because Mr. Berezovsky's case was that "the ORT transaction presaged the *modus operandi* for the Sibneft transaction"[394]. Specifically, Mr. Berezovsky alleged that Mr. Abramovich deliberately arranged for Mr. Glushkov to remain in prison so that Mr. Abramovich could use the same alleged threat a second time in relation to Sibneft. In his fourth witness statement he put it as follows:

> "365. However, despite the sale of the ORT shares to entities controlled by Mr. Abramovich, and despite Mr. Abramovich telling us that he was working to make sure that Nikolay would be free, and despite our being told that Nikolay would be released on New Year's Eve, Nikolay remained in prison. I had, and have, no doubt that this was Mr. Abramovich's doing: he wanted Nikolay to stay in prison because he was determined to use the same pressure to which we had submitted in relation to ORT again for his own purposes, in order to take our share of Sibneft."

725. In cross-examination he confirmed that this indeed was his case and emphasised Mr. Abramovich's appreciation that, because of Mr. Berezovsky's and Mr. Patarkatsishvili's concern about Mr. Glushkov's predicament, he, Mr. Abramovich, had strong leverage to force the two men to surrender their Sibneft interests. The following passage from his cross-examination gives a flavour of his evidence on this topic:

> " … my clear understanding is that after Mr. Abramovich recognised how important Mr. Glushkov is for us and that we, without any discussion about price or anything, agreed that Glushkov will be released if we will -- if we'll sell – return back our shares and not to be keep in jail a long, long time. Abramovich recognise that it's -- this point is very sensitive for us.
>
> And just later on, but not too much later because even in autumn 2000, when we have been in Russia,

394 Re-re-re-Amended Particulars of Claim, paragraph C31.

Abramovich already mentioned that Sibneft is under pressure because of my new and -- because of my tension with Putin and he already that time start to, already that time start to present position that we had become more dangerous for the company than even before. But when he recognised that he has amazing leverage, then he made -- he is progressing in his, I don't like to say, violence. Because initially he put Putin behind – he put Putin in front of him as far as ORT is concerned saying, 'This is Putin, this is not me, this is Putin asking'.

In Sibneft, position was different, 'Putin is behind of me and you know that he is dangerous, he can do everything and I'm the person who has special relations with Putin', and he may influence – 'I may influence to his decision'.

In RusAl case, he even did not put Putin at all as a name because he already was form himself, I'm sorry to say, as a gangster, yes, because he already knew that it's enough him to do any step, we are not able to do anything. It's like evolution of crime of Mr. Abramovich and in Sibneft it was the same story but it's the story of Abramovich with Putin behind of him.

Q. What is your evidence, if you have any, that Mr. Abramovich deliberately kept Mr. Glushkov in jail so as to be able to use the threat a second time? If you don't have any evidence, fine; if you do, now is your chance to tell us what it is.

A. It's exactly the point. The point is that Abramovich has a great influence to Mr. Putin. I don't think that Putin point was to seize Sibneft because he got that time what he want to get, ORT under his control, and recognising the importance for us of Glushkov, Abramovich used the same method, the same method, threat, and we didn't have choice.

We didn't have choice for two reasons. Because, first of all, Abramovich did not deliver on the one hand that Glushkov will be released. On the other hand, he again said that he -- that Glushkov will be released and we will start negotiations, because it's long story, not just for five minutes. And it is the point that we accept absolutely seriously, serious, that this is threat and [Glushkov] stay in jail long, long time if we will not sell our shares or if we will not sell --"

726. In his evidence, Mr. Berezovsky said that he had not previously taken "especially seriously" the "warnings" that Mr. Abramovich is alleged to have given to Mr. Patarkatsishvili after August 2000 about a possible expropriation of Sibneft[395]. According to him, it was the meeting in December 2000 at Cap d'Antibes that changed his view:

> "But with the arrest of Nikolay, the betrayal of Mr. Abramovich, and the realisation that Mr. Abramovich was himself in a position to influence, and might well in fact be influencing, all that was happening, I saw Mr. Abramovich's threats for what they were.
>
> …
>
> From the time of the Cap d'Antibes meeting in late December 2000, I believed that the pressure from the Kremlin (if any) was an excuse and that Mr. Abramovich was the person who would make the seizure happen (using his influence with President Putin), or not."[396]

727. In other words, Mr. Berezovsky's case was that the inference which he reasonably drew from Mr. Abramovich's conduct at the Cap d'Antibes meeting was that Mr. Abramovich was threatening that he himself would use his influence to bring the alleged consequences about. Thus, on any basis, Mr. Berezovsky's Sibneft intimidation allegations were extremely serious ones[397]. Unlike the ORT intimidation allegation, which involved Mr. Abramovich merely acting as the agent of the Russian State in conveying the State's message that it would continue to detain Mr. Glushkov and expropriate the ORT stake, unless Mr. Berezovsky agreed to sell the stake to Mr. Abramovich, the Sibneft intimidation allegations postulated the accusation that Mr. Abramovich himself, through his influence over President Putin and the then current administration, would bring about not only the expropriation by the State of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged Sibneft interests, but also the continued imprisonment of Mr. Glushkov. In other words, Mr. Berezovsky was accusing Mr. Abramovich not merely of being the messenger of the State's blackmail threat, but rather as the enforcer of such threat, if the demands were not met. It is because of Mr. Berezovsky's reliance on what he asserts happened at the alleged Cap d'Antibes meeting on 7 December 2000 that my conclusions in relation to the ORT intimidation issue have such significance.

Relevant law governing the alleged tort

728. By the time of closing submissions, Mr. Berezovsky's case was that the Sibneft intimidation claim was governed by French law, alternatively English law, on the basis that the alleged threats were, according to Mr. Berezovsky:

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395 Berezovsky 4th witness statement, paragraph 367.

396 Berezovsky 4th witness statement, paragraphs 367 and 369.

397 It was common ground that, both under Russian law, and English law, improper expropriation and detention by a state officer, and its procurement, would amount to a criminal offence.

> "… largely made in France, entirely received by Mr. Berezovsky in France, and acted upon by Mr. Berezovsky to his detriment in France and in England".

729. Mr. Abramovich's case was that the alleged tort was governed by Russian law. It was common ground that, in all relevant respects relating to be necessary constituent elements of the tort, French law was the same as English law.

730. As identified in paragraph 5 of the Court of Appeal's judgment in respect of the summary judgment application in this case, the essential ingredients of the tort of intimidation as a matter of English law are:

> "1) a threat by the defendant (D) to do something unlawful or "illegitimate";
>
> 2) the threat must be intended to coerce the claimant (C) to take or refrain from taking some course of action;
>
> 3) the threat must in fact coerce C to take such action;
>
> 4) loss or damage must be incurred by C as a result."

731. Broadly speaking it was agreed that a claim for intimidation in Russian law turned on principles similar, but not identical, to those which would apply at English law. Broadly speaking, it was agreed that, as a matter of Russian law, Mr. Berezovsky had to establish:

i) harm (i.e. loss);

ii) fault on the part of Mr. Abramovich;

iii) unlawful conduct of Mr. Abramovich; and

iv) a causal link between the two.

732. It was also common ground between the parties that both Russian law and English law[398] recognised a distinction between a (non-actionable) warning by the alleged tortfeasor about something that a third party may do, and an actionable threat by the alleged tortfeasor to do the act himself, or bring it about.

733. So far as limitation issues were concerned, it was common ground between the parties that:

i) under the Foreign Limitation Periods Act 1984, the limitation period to be applied was that of the substantive law governing the alleged tort;

ii) if the alleged tort were governed by French law, the claim would not be time-barred.

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398 Therefore French law as well.

However, there was a dispute between the parties as to whether, if English or Russian law applied, the intimidation claim would be time-barred.

734. For the purposes of establishing the facts in relation to the Sibneft intimidation issue, it was not necessary for me to decide which was the substantive law governing the alleged tort.

The evolution of Mr. Berezovsky's case in relation to the Sibneft intimidation issue

735. Before I turn to consider the evidence relating to the Sibneft intimidation issue, I identify certain background matters which are relevant to my evaluation of that evidence.

736. In assessing the veracity of Mr. Berezovsky's case in relation to the Sibneft intimidation issue, it is appropriate to have regard to the change in the nature of his allegations over time. As I have already said, in a case of this type which relates back to events which occurred many years ago, it may well be that inconsistencies in the pleading or presentation of a party's case should not attract criticism or be regarded as undermining the central thrust of the claim or defence put forward. That is particularly so where, as the trial draws nearer, investigations into the evidentiary background are more focused, and witnesses' memories may be prompted by their having to concentrate their minds on detail. But in circumstances where, as here, the court is left with the uneasy suspicion that the changes to Mr. Berezovsky's case on critical facts (such as what he understood the alleged threats were, and how he assessed them), were tailored to meet legal difficulties raised on behalf of Mr. Abramovich or by the court, during the course of the summary judgment application, they become a necessary part of the evaluation process.

737. The evolution of Mr. Berezovsky's case on this issue may be summarised as follows:

i) Mr. Berezovsky's current case on intimidation is pleaded at paragraphs C41 to C46 of the Re-re-re-Amended Particulars of Claim. It is as follows:

a) At meetings in Moscow between Mr. Abramovich and Mr. Patarkatsishvili between August 2000 and May 2001[399], Mr. Abramovich told Mr. Patarkatsishvili that there was "increasing pressure from the Kremlin" and that Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft could[400] (or would[401]) be expropriated[402]. It is not alleged that any threat relating to Mr. Glushkov was made on these occasions. It was clear to Mr. Patarkatsishvili from those statements that Mr. Patarkatsishvili understood (as, it is alleged, Mr. Abramovich intended him to) that he and Mr. Berezovsky should sell their interests in Sibneft to Mr. Abramovich or "face the consequences".[403]

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399 See Answer 11 of the Consolidated Further Information dated 7 April 2010.
400 Re-re-re-Amended Particulars of Claim, paragraph C41.
401 Re-re-re-Amended Particulars of Claim, paragraph C41.
402 As per paragraph 367 of Mr. Berezovsky's fourth witness statement.
403 Re-re-re-Amended Particulars of Claim, paragraph C41.

b) In the Voluntary Further Information dated 17 January 2011, served by Mr. Berezovsky during the hearing in the Court of Appeal, Mr. Berezovsky pleaded that it was implicit in these statements that "Mr. Abramovich would use his influence with the Putin regime to seek to cause their interests to be expropriated."[404]

c) Mr. Patarkatsishvili relayed the content of those conversations to Mr. Berezovsky at his home in France, as a result of which they decided in early 2001 to sell their interests in Sibneft to Mr. Abramovich and asked for a meeting to discuss the terms.[405]

d) That meeting occurred at Munich airport in early May 2001. Mr. Abramovich attended with Ms Panchenko and Mr. Patarkatsishvili attended with Mr. Fomichev. Mr. Berezovsky was not there. In the absence of Ms Panchenko and Mr. Fomichev, Mr. Patarkatsishvili raised the question of Mr. Glushkov's release from prison. Mr. Abramovich told Mr. Patarkatsishvili that although Mr. Glushkov had not been released in December 2000, if Mr. Berezovsky and Mr. Patarkatsishvili were to sell their interests in Sibneft to him, Mr. Glushkov would now be released[406].

e) In the Voluntary Further Information served by Mr. Berezovsky during the hearing in the Court of Appeal, Mr. Berezovsky alleged that it was implicit in these statements: (i) that if they did not sell their interest in Sibneft to him, Mr. Glushkov would not be released; and (ii) that Mr. Abramovich would use his influence with the "Putin regime" to ensure that he was not released[407].

f) Mr. Patarkatsishvili told Mr. Abramovich that he and Mr. Berezovsky wanted a total of $2.5 billion for their interest in Sibneft shares, even though he and Mr. Berezovsky recognised that this was significantly less than the shares were worth; Mr. Abramovich stated that he would only pay $1.3 billion and also refused to pay monies which were allegedly due in connection with their interests in Sibneft and which had not been paid since December 2000[408].

g) Mr. Patarkatsishvili in private then rang Mr. Berezovsky from the Munich meeting. Mr. Berezovsky was at his home at Cap d'Antibes. They discussed (i) what Mr. Abramovich had said to Mr. Patarkatsishvili since August 2000 about the risk of expropriation; (ii) the threats that Mr. Abramovich had made in relation to ORT; and (iii) the fact that Mr. Glushkov had been arrested in December 2000 and detained in very ill health in Lefortovo prison. They concluded

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404 These allegations, originally set out in response 28 (1), were subsequently incorporated into Mr. Berezovsky's Re-Re-Amended Particulars of Claim at paragraph C51(3) dated July 2011.

405 Re-re-re-Amended Particulars of Claim, paragraphs C42, C45.

406 Re-re-re-Amended Particulars of Claim, paragraph C46(1).

407 These allegations were subsequently incorporated into Mr. Berezovsky's Re-re-re-Amended Particulars of Claim at paragraph C51(4).

408 Re-re-re-Amended Particulars of Claim, paragraph C46(1)(b) – (d).

that in these circumstances they had no option but to sell at the $1.3 billion figure which Mr. Abramovich had offered[409].

h) The result was an agreement to sell the interests of Mr. Berezovsky and Mr. Patarkatsishvili to Mr. Abramovich for the significantly undervalued price of $1.3 billion[410]. By the Devonia Agreement dated 12 June 2001, Mr. Berezovsky and Mr. Patarkatsishvili agreed to sell their interest in Sibneft to Devonia[411].

738. However, as Mr. Sumption submitted in his oral closing submissions, the Sibneft expropriation threat now being alleged was materially different from the one that Mr. Berezovsky was consistently alleging in the period from 2003 up until the first version of his particulars of claim dated 6 September 2007, and indeed thereafter. Mr. Berezovsky did not originally suggest that there was a threat to expropriate his interest. The threat, as allegedly conveyed by Mr. Abramovich to Mr. Patarkatsishvili was that Sibneft, as a company, would be attacked by agencies of the Russian State if Mr. Berezovsky continued to be associated with it. The allegation was couched in these terms, for example, in various press interviews, in Carter Ruck's letter before action dated 14 May 2007 and in a witness statement given by Mr. Berezovsky dated 25 September 2007 in the context of litigation between other Russian oligarchs, namely the *Cherney v Deripaska* litigation. In the letter before action the case alleged, in summary, was that Mr. Abramovich "advised" Mr. Patarkatsishvili that if Mr. Berezovsky continued to be associated with Sibneft, the company would come under attack from the Russian Prosecutor's office and tax authorities in the same way as had Mr. Gusinsky's companies. The claim in the letter was based, not on implicit threats from Mr. Abramovich, but rather on the proposition that Mr. Berezovsky had been induced to part with his interest on the basis of "threats and intimidation" made by the Russian State, of which Mr. Abramovich had taken "unfair and unconscionable advantage". It did not allege any threats of action by Mr. Abramovich; any threats of expropriation by the Russian State of Mr. Berezovsky's or Mr. Patarkatsishvili's interests; or indeed any threats at all, even by the Russian government, before the alleged Munich airport meeting. In cross-examination Mr. Berezovsky agreed that letter described "absolutely correctly" what he said was the "reality"[412]. He claimed that "the facts are the same" but that the "understanding of the lawyers step by step changes"[413]. I did not find that explanation of the change to his case satisfactory.

739. The first occasion on which Mr. Berezovsky alleged that there was a threat to expropriate his interest was in the first version of his Particulars of Claim, dated 6 September 2007 (which Mr. Abramovich claimed had never been formally served). This statement of case alleged that at the Munich meeting Mr. Abramovich had said that there was both a threat to the company and a threat to expropriate Mr. Berezovsky's and Mr. Patarkatsishvili's interests. It pleaded:

> "15. At the May 2001 meeting, the Defendant told Mr. Patarkatsishvili:

409 Re-re-re-Amended Particulars of Claim, paragraph C46(2).
410 Re-re-re-Amended Particulars of Claim, paragraph C46(3).
411 Re-re-re-Amended Particulars of Claim, paragraphs C48 and C54.
412 Day 7, page 126
413 Day 7, page 125.

(1) that so long as the Claimant continued to hold any beneficial interest in Sibneft, Sibneft, its management and its owners would face continued persecution from the Russian Prosecutor's Office and the tax authorities;

(2) that if the Claimant did not relinquish his interest in Sibneft, it would come under attack by those in power in Russia in a manner similar to companies controlled by Mr. Gusinsky;

(3) that if the Claimant did not relinquish his interest in Sibneft it would simply be seized by the Russian state without compensation. Accordingly, he had no alternative but to dispose of it to the Defendant." [414]

740. However, even at this stage, it was not alleged that Mr. Abramovich would bring this about, rather that the Russian State would do so; I do not accept Mr. Rabinowitz's submission that such an allegation was implicit in this pleading. The subsequent Particulars of Claim (served on 8 January, 2008) did not expressly do so, but they did make sufficiently clear and specific allegations against Mr. Abramovich that the Court of Appeal was able to conclude that[415]:

> "… any informed and reasonable person would understand that Mr. Berezovsky was alleging that Mr. Abramovich was threatening (at any rate impliedly, if not expressly) that he would do what he could to bring about the threatened expropriation of Mr. Berezovsky's Sibneft interests if he was not prepared to sell at an undervalue to Mr. Abramovich."

741. Again, I found Mr. Berezovsky's attempt in cross-examination to explain this change in his case unconvincing. He said that:

> "But again, I present again … the same story. I never change the facts. The interpretation of the facts is like lawyers' understanding. And at the beginning, particularly at the beginning, it was a lot misunderstanding what I presented and what was reality; what I presented and how they accept it[416].

742. But the reality here was that the allegation that Mr. Berezovsky understood from his conversation with Mr. Patarkatsishvili that Mr. Abramovich would use his influence at the Kremlin to bring about the expropriation without compensation of Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft interests, was a critical – and basic - factual element of the story which Mr. Berezovsky himself needed to provide to his solicitors; it was not something that should have only emerged as a result of his lawyers' changing "interpretation" of the facts.

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414 Particulars of Claim, paragraphs 15(1)-(3).

415 See paragraph 84 of the Court of Appeal's judgment at [2011] EWC A Civ 15.

416 Berezovsky Day 7, pages 138-139.

743. In a similar way, the allegation relating to the alleged threat about Mr. Glushkov has also changed over time. Thus, Mr. Berezovsky's allegation in relation to Mr. Glushkov was originally that Mr. Abramovich assured Mr. Patarkatsishvili at the meeting at Munich airport in May 2001 that, if Mr. Berezovsky's alleged interests in Sibneft were sold, Mr. Glushkov would be released from prison. Mr. Abramovich was not alleged to have said that he would do anything to prolong Mr. Glushkov's detention, but only to have assured Mr. Patarkatsishvili that the government would release Mr. Glushkov if Mr. Berezovsky and Mr. Patarkatsishvili sold out of Sibneft. The allegation appeared in this form in Mr. Berezovsky's witness statement in the *Cherney v Deripaska* litigation in September 2007[417]; and also in his witness statement in response to Mr. Abramovich's application for summary judgment, where the allegation was that Mr. Abramovich had said that "… he would see to it that Mr. Glushkov was now released"[418].

744. The allegation that Mr. Berezovsky understood that:

> "… unless we sold our interests in Sibneft, Mr. Abramovich would use his influence with President Putin and the Prosecutor-General's office to ensure that [Mr. Glushkov] would not be released from prison"

and that he had:

> "… no doubt that this was what Mr. Abramovich intended we understand"

emerged for the first time in the Voluntary Further Information served in the course of the hearing in the Court of Appeal[419], as a result, I was told, of comments made by the Court, *arguendo*, to the effect that the only allegation then pleaded, namely that Mr. Abramovich had said that Mr. Glushkov "would now be released"[420], was an inducement, not a threat. The allegation in its revised form then appeared in Mr. Berezovsky's fourth witness statement in the following terms:[421]

> "384 Badri telephoned me from the meeting. I was at my home in Cap d'Antibes at the time.
>
> 385 The first thing we discussed was the release of Nikolay from prison, which, Badri told me, he had raised. He said that Mr. Abramovich had told him that although Nikolay had not been released in December 2000, if we were to sell our interest in Sibneft to him, he would see to it that Nikolay was now released. I understood from this that, unless we sold our interests in Sibneft, Mr. Abramovich would use his influence with President Putin and the Prosecutor-General's office to ensure that Nikolay would not be released from prison.

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417 Mr. Berezovsky's witness statement, paragraph 10.

418 Berezovsky 2, paragraph 114.

419 Response (2) of the Voluntary Further Information dated 17 January 2011.

420 Re-Amended Particulars of Claim, paragraph C46(1)(a).

421 Berezovsky 4th witness statement, paragraph 385.

> I had no doubt that this is what Mr. Abramovich intended that we understand, especially as he had made clear at our meeting at Le Bourget how close he was to influential people within the Prosecutor-General's office."

745. Although in his written evidence, Mr. Berezovsky suggested that he had only inferred from what Mr. Patarkatsishvili had said that Mr. Abramovich would use his influence to keep Mr. Glushkov in jail, in his oral evidence Mr. Berezovsky insisted that Mr. Patarkatsishvili had actually said to him that Mr. Abramovich was going to ensure that Mr. Glushkov stayed in jail[422].

The need to interpret Mr. Abramovich's words and conduct in context

746. However, it is important to emphasise that, as Mr. Rabinowitz submitted[423], whilst Mr. Berezovsky's case recognised the distinction between a non-actionable warning and an actual threat, it had always accepted that the words used by Mr. Abramovich, on their face, did not purport to threaten Mr. Berezovsky but rather warned him of adverse State action; in other words, Mr. Rabinowitz submitted, it had never been Mr. Berezovsky's case that Mr. Abramovich had said in express terms that, unless Mr. Berezovsky handed over Sibneft, then Mr. Abramovich himself would bring about the expropriation of his interests and cause Mr. Glushkov to remain in prison indefinitely; rather, it was Mr. Berezovsky's case that Mr. Abramovich was more subtle than to put his point expressly - he was playing a game; but his clear message, which he intended to, and indeed did, deliver and which Mr. Berezovsky and Mr. Patarkatsishvili well understood, was a threat; thus the issue was not whether the express words of threat were used; rather the issue was whether, in context, what Mr. Abramovich said was intended to be, and was properly understood to be, a threat or merely a warning.

747. I accept Mr. Rabinowitz's submission that context is key, and that it is not appropriate, in evaluating the evidence, merely to look at the actual words used by Mr. Abramovich. Rather the court has to look at the circumstantial context in which the discussions with Mr. Patarkatsishvili took place and to identify whether, in that context, Mr. Patarkatsishvili and Mr. Berezovsky could properly have construed Mr. Abramovich's words and conduct as a threat.

Inherent difficulty with the alleged expropriation threat

748. Mr. Sumption submitted that there was a conceptual difficulty inherent in Mr. Berezovsky's case in relation to the alleged threat that, unless he and Mr. Patarkatsishvili sold their Sibneft interests to Mr. Abramovich, the Russian authorities would expropriate such interests and that Mr. Abramovich would use his influence with President Putin to bring that about; the difficulty was that Mr. Berezovsky's case now was that he and Mr. Patarkatsishvili simply had personal contractual rights as against Mr. Abramovich, in relation to their Sibneft and Sibneft-derived interests and not proprietary rights. Mr. Sumption submitted that it was difficult to envisage how the State was going to go about expropriating an

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422 Berezovsky Day 7, pages 142-143.

423 See day 41, page 128 *et seq*.

undocumented personal contractual right; the notion that Mr. Abramovich was going to procure the Russian State to require Mr. Berezovsky and Mr. Patarkatsishvili to transfer their alleged personal contractual rights against Mr. Abramovich to the State, thereby substituting itself as the alleged "partner" of Mr. Abramovich had an air of unreality about it.

749. As Mr. Rabinowitz submitted in response, as a matter of legal technicality it would, of course, be possible for the Russian State to interfere with personal contractual rights and deprive a person of them. He gave theoretical examples such as the State: declaring that all of Mr. Berezovsky's assets were forfeit to the State, so that any contractual obligations due to him were then due to the State; or declaring that his contractual rights no longer existed; or putting pressure on prosecutors and judges to refuse to recognise Mr. Berezovsky's rights. Mr. Rabinowitz pointed out that in any event, Mr. Berezovsky had never suggested that Mr. Abramovich actually used the word "expropriation" in his discussions with Mr. Patarkatsishvili, nor had he alleged that the precise way in which his interests would be taken were spelt out in so many words; it did not need to be. Mr. Rabinowitz referred to the fact that, as Mr. Berezovsky had explained in paragraph 373 of his 4th witness statement, Mr. Berezovsky had no doubt that a range of strategies using criminal investigations, court procedures, insolvency procedures, tax investigations and the like could have been used, if Mr. Abramovich had wanted. He also submitted that, under whichever was the correct law of the tort, it was irrelevant whether the threat was in fact possible to carry out; all that mattered was that Mr. Berezovsky believed that such measures could have been adopted and he was not challenged on such belief.

750. Whilst I accept Mr. Rabinowitz is correct in submitting that, theoretically no doubt, the Russian State might have acted in any of the ways alleged, I am nonetheless left with a sense of unreality in relation to the idea that Mr. Abramovich would have threatened to use his influence with the Putin regime to bring about the expropriation by the State of Mr. Berezovsky's vague and undocumented contractual rights against Mr. Abramovich in relation to Sibneft. The last thing that Mr. Abramovich would have wanted from a commercial point of view, given the history of the Sibneft privatisation, was the State, in effect, as assignee of Mr. Berezovsky (and Mr. Patarkatsishvili), having an equal share in Sibneft. The far more obvious course would have been for Mr. Abramovich simply to have threatened that the two men would never be able to prove their undocumented rights against him in a Russian court. But that was not a suggestion made by Mr. Berezovsky in his witness statement - nor was the allegation made that pressure could be exerted by the State on prosecutors and judges to refuse to recognise Mr. Berezovsky's rights, notwithstanding Mr. Rabinowitz's reference to it in argument.

751. Moreover, the various ways in which it was suggested both in Mr. Berezovsky's evidence and in his written closing submissions[424] that "*de facto* expropriation" of Mr. Berezovsky's alleged Sibneft interest could have been achieved, all involved action targeted against Sibneft itself. It was implausible to suppose that Mr. Abramovich would seek to procure such damaging action against a company of which, on this hypothesis, he was 50% owner. The idea, suggested at page 200 of Mr. Berezovsky's First Schedule, that Mr. Abramovich could, or would, have

424 See paragraph 894 (3) (c).

procured the placing of Sibneft into bankruptcy, following some spurious tax investigation (also procured by him), so that he could have purchased its assets at an undervalue and thus have become 100% owner of the business, was also fanciful, given Sibneft's reliance on Western loan capital and the reputational consequences of such a scheme for Mr. Abramovich.

752. It is against the above background that I turn to consider the evidence relating to the Sibneft intimidation issue.

Mr. Abramovich's access to and influence with President Putin and the Kremlin

753. It was clear from the evidence that, at the material times, Mr. Abramovich enjoyed very good relations with President Putin and others in power at the Kremlin, such as Mr. Voloshin, who was then Head of the Presidential Administration. It was also clear that Mr. Abramovich had privileged access to President Putin, in the sense that he could arrange meetings and discuss matters with him, such as the purchase of the ORT shares, the release of Mr. Glushkov and Mr. Abramovich's campaign in respect of the Chukotkan gubernatorial election. This access also included information being conveyed back to Mr. Abramovich, by, for example, Mr. Voloshin in relation to discussions with Mr. Berezovsky at the Kremlin. In his own commentary on the Le Bourget transcript, he referred to the fact that he had stated to the press that he could "… theoretically act as a trusted intermediary between Mr. Berezovsky and the government". He clearly acted as a conduit for the relaying of information from President Putin to Mr. Patarkatsishvili as to the latter's ability to visit Russia, and no doubt also as to President Putin's views on Mr. Berezovsky. The experts on contemporary Russian history agreed that there were widespread reports in the Russian and international press suggesting that Mr. Abramovich was one of the oligarchs most favoured by President Putin and his administration. Mr. Abramovich himself accepted that he was regarded by Mr. Berezovsky and Mr. Patarkatsishvili as "close to people in power in Moscow". But, as Mr. Voloshin explained, at the time, he was not a member of President Putin's "inner circle".

754. Mr. Berezovsky sought to rely on this evidence to support his contention that it was entirely credible that Mr. Abramovich should have made the threats in the terms alleged by the former, and likewise entirely credible that Mr. Berezovsky should have believed that Mr. Abramovich was in a position to procure that those threats were carried out. This, Mr. Rabinowitz submitted, was relevant to the context in which what was said by Mr. Abramovich had to be considered.

755. However the evidence that, as a rich businessman favoured by President Putin, Mr. Abramovich was in a position to exert influence over President Putin, or members of his administration, to persuade him or them, <u>improperly</u> to exercise his or their powers to expropriate or otherwise damage Mr. Berezovsky's and Mr. Patarkatsishvili's commercial interests, or <u>wrongfully</u> to detain Mr. Glushkov, was tenuous in the extreme. It consisted of highly conjectural evidence proffered by Professor Fortescue to the effect that he would not find it surprising that Mr. Abramovich was in a position to encourage State agencies, including the Kremlin to "take steps helpful to him" if they were also beneficial to the Kremlin[425], as

425 See paragraph 104 of his first expert report.

amplified in the third scenario referred to in the following passage of his evidence in cross-examination:

> "Q. Let's have a look at your conclusion to this section at paragraph 104 G(B)1/1.01/30. You say that you would not find it surprising that Mr. Abramovich was in a position to encourage state agencies, including the Kremlin, to "take steps helpful to him" if they were also beneficial to the Kremlin.
>
> Is that a fair summary of what you're saying at paragraph 104?
>
> A. Yes.
>
> Q. What steps do you have in mind when you say that?
>
> A. If I can set up a number of scenarios: I don't think Mr. Abramovich could have come to Mr. Putin and said, 'Mr. X is causing me problems, I know that Mr. X is your good friend and a close ally, nevertheless I want you to help me take steps against him, to remove him as a competitor or whatever', I would find that quite implausible.
>
> If Mr. --
>
> Q. And -- sorry, forgive me, I didn't realise you were continuing. Please go on.
>
> A. If Mr. Abramovich had come to Mr. Putin and said 'There's this Mr. X, I don't think you know Mr. X, or you're not interested in Mr. X, he's a problem for me, can we do something about it, would you help me do something about it?', I think that would be probably unwise, an unwise thing to do in the case of Mr. Putin, but I don't find it totally impossible.
>
> Q. Right.
>
> A. If Mr. Abramovich came along to Mr. Putin -- put it another -- no, I'll start again.
>
> If Mr. Abramovich knew that Mr. X was causing Mr. Putin considerable frustration and grief he could have two options, he could just say, "Okay, I'll leave things to go their own way and hopefully the outcome that I want will just simply happen because Mr. Putin will take measures on his own". The other possibility is that Mr. Abramovich could have gone to Mr. Putin and said, 'Look, you know, Mr. X is causing us both

> some grief, let's work together to do something about it', I find that quite plausible."[426]

756. But immediately after the passage quoted above, Professor Fortescue himself acknowledged that he could not say that Mr. Abramovich was in a position to encourage criminal proceedings against Mr. Berezovsky or people associated with Mr. Berezovsky, and that none of the sources he relied upon in his report supported the proposition that there was a widespread view that that was so.

757. Mr. Berezovsky's submissions to the effect that it was entirely credible that Mr. Abramovich should have made the threat in the terms alleged by the former were also based on a passage in paragraph 52 of the Joint Memorandum in which Professor Fortescue and Professor Service agreed that, from 2000 onwards (and, indeed, before that) there were incidents across Russia in which national and local State agencies used their powers to achieve the *de facto* confiscation or expropriation of private business assets. The experts also agreed that these incidents would have been known to experienced Russian businessmen like Mr. Berezovsky and Mr. Abramovich. Professor Service was initially reluctant to accept that these incidents often occurred at the prompting of, or in collusion with, rival businessmen. In cross-examination, however, he accepted that he "… would guess it happened often" and that he would certainly accept that these incidents were sometimes prompted by other private businessmen.

758. However, in the absence of any direct or specific evidence supporting the proposition that Mr. Abramovich was in a position to influence President Putin or members of his administration improperly to exercise his or their powers, whether in relation to wrongful expropriation or detention, I am not prepared to accept Mr. Rabinowitz's submission that the context demonstrated that it was highly credible, given his close connection with President Putin and his access to the Kremlin, that Mr. Abramovich would have made such a threat, because he was in a position to do so. Nor do I accept Mr. Berezovsky's evidence that either he or Mr. Patarkatsishvili genuinely believed that Mr. Abramovich was in a position to procure the continued detention of Mr. Glushkov or the wrongful expropriation of Mr. Berezovsky's Sibneft interests. The evidence which Mr. Berezovsky gave in relation to this issue was extravagant and unconvincing. The two men might justifiably have considered that Mr. Abramovich, because of his connection with President Putin, might have been in a position to make representations to him or to Mr. Voloshin, in an attempt to secure Mr. Glushkov's release on humanitarian or similar grounds, but that is a very different matter. There was no evidence to suggest that Mr. Abramovich knew, or was a confidant of, the public prosecutor, or that he was in a position to influence the conduct of criminal proceedings. Contrary to Mr. Rabinowitz's submissions, there was nothing in the transcripts of the Le Bourget meeting to support this assertion.

759. Finally in this context, I should mention that Professor Fortescue accepted in cross-examination the proposition that President Putin was "very much his own man", who was "not prepared to be pushed around by rich men" and "was anxious to demonstrate" that he was not prepared to be so manipulated. There was no evidential basis supporting the contention that Mr. Abramovich was in a position to manipulate, or otherwise influence, President Putin, or officers in his administration, to exercise

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426 Day 37, pages 86-88.

their powers in such a way as to enable Mr. Abramovich to achieve his own commercial goals. At the time, Mr. Abramovich was not that type of political animal; I am prepared to assume that, on occasion, President Putin may have taken his views into account when making decisions, but the suggestion that Mr. Abramovich was in a position to pull the presidential strings was simply not borne out by the evidence.

The meetings between Mr. Abramovich and Mr. Patarkatsishvili in 2001

760. I accept Mr. Abramovich's evidence that he met Mr. Patarkatsishvili in the Byblos Hotel in Courchevel on or around 4 or 5 January 2001 and that it was on this occasion that Mr. Patarkatsishvili first proposed that the relationship between Messrs Berezovsky, Patarkatsishvili and Abramovich in relation to Sibneft should be ended by Mr. Abramovich making a large final payment to them, in order to "set them up for life" (being the effect of the words used by Mr. Patarkatsishvili). The date of the meeting was supported by relevant travel and other records, and its purpose by Mr. Shvidler's account of what Mr. Abramovich had told him shortly thereafter. Mr. Patarkatsishvili sought to justify his demand by explaining that, since Mr. Berezovsky had left Russia, he needed to have financial independence and did not wish to have the uncertainty of irregular payments and the delays associated with negotiating the manner in which he was going to get paid.

761. I also accept Mr. Abramovich's evidence that, on 10 January 2001, Mr. Abramovich travelled from Courchevel to Megève by helicopter on the way to Geneva; that he met both Mr. Patarkatsishvili and Mr. Berezovsky at the Megève heliport; and that at this meeting they discussed the final lump sum payment that had been proposed by Mr. Patarkatsishvili in Courchevel a few days before. It would appear that no precise figure was agreed at the meeting, but Mr. Abramovich said something along the lines that he could pay $1 billion. As Mr. Abramovich described, and as I accept, there was no attempt by either Mr. Patarkatsishvili or Mr. Berezovsky to justify the request based on alleged ownership rights; rather, they tried to justify the amount sought by emphasizing that Sibneft was doing well and consequently that Mr. Abramovich could afford to pay.

762. As I have already described above, Mr. Abramovich's recollection that such a meeting took place was supported by his chef at the time, Mr. Sponring; it was also supported by the fact that, as Mr. Berezovsky accepted, he was in Megève at the time and knew that Mr. Abramovich was also there, and by the relevant travel and other records. Mr. Shvidler's evidence also supported Mr. Abramovich's account of what was discussed at the meeting; Mr. Shvidler had been skiing in Courchevel at the same time as Mr. Abramovich and said that Mr. Abramovich had told him after the Megève meeting that he was committed to pay at least $1 billion.

763. Mr. Rabinowitz submitted that there was no reason whatsoever why, in 2001, Mr. Abramovich should have agreed to make such a substantial payment allegedly to discharge Mr. Abramovich's *krysha* obligations at a time when, for the foreseeable future, Mr. Berezovsky could have been of no conceivable political or commercial use to Mr. Abramovich; Mr. Rabinowitz submitted that this point critically and fundamentally undermined the truth of Mr. Abramovich's case - the only commercial rationale for agreeing to make such a large payment could have been that it was the price for the sale of Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft interests to Mr. Abramovich.

764. I disagree. I have little doubt that the first few months after Mr. Berezvosky's departure from Russia from October to December 2000 were a difficult and uncertain time for him and that he would have been concerned to ensure the certain, and continued, receipt of funds from Mr. Abramovich. He would have known that, as his conflict with President Putin worsened, the likelihood was that he would be living abroad in the foreseeable future and that he would need substantial funds, freely available in the West, to support his lifestyle. Mr. Abramovich had already paid $305 million in the last quarter of 2000, as already described as a "safety cushion" to establish Mr. Berezovsky abroad. But, as Mr. Abramovich described, given the hostility between the Putin administration and Mr. Berezovsky, Mr. Berezovsky was not in a position to continue to provide *krysha* services*:* thus he and Mr. Patarkatsishvili could not with any confidence rely upon Mr. Abramovich continuing to make payments to them in the long term. In such circumstances Mr. Berezovsky and Mr. Patarkatsishvili had every motivation, at the beginning of 2001, to seek a final, once and for all, lump sum payment from Mr. Abramovich, whereby he in effect would "buy out" or satisfy, for all-time, his *krysha* obligations. Mr. Berezovsky's assertion that at the time he had plenty of money to finance a future life in exile was not in point, irrespective of the fact that it was unsupported by any evidence to demonstrate availability of sufficient cash funds in the West to finance a lifestyle of the type which he had previously enjoyed. Mr. Berezovsky's previous proposal, made at the Le Bourget meeting, had been that some Sibneft shares should be transferred to him - although, as Mr. Abramovich said, and as I find, he had no entitlement to such transfer. But he had apparently lost interest in that proposal, perhaps because of the tax consequences, and therefore he and Mr. Patarkatsishvili requested a lump sum payment.

765. On the hypothesis that Mr. Abramovich's *krysha* case was correct, I find that there was every reason why he should have considered it appropriate and desirable in early 2001 to agree to make such a substantial payment to Mr. Berezovsky and Mr. Patarkatsishvili. Although, when Mr. Abramovich informed Mr. Shvidler that he had offered around $l billion to end his relationship with Mr. Berezovsky, Mr. Shvidler made his feelings very clear (as did other close associates) that Mr. Abramovich should not have agreed to pay anything like $1 billion, Mr. Abramovich himself explained in what I found to be credible terms why he made the decision. First of all, he had been struggling with how he was going to deal with what he regarded as the increasingly unreasonable demands being made by Mr. Berezovsky, directly, and via Mr. Patarkatsishvili. At the Courchevel meeting Mr. Patarkatsishvili had specifically told him that if he made one substantial payment then thereafter they both would be able to manage for themselves. He had understood that this would be a final payment. Thus he described his motives as follows:

> "274. For my part, however, the decision was both a business and a personal one. From a business point of view, I needed to ensure that I did not make an enemy of Mr. Berezovsky or Mr. Patarkatsishvili. Although in late 2000 Mr. Berezovsky left Russia, at the time I had no way of knowing whether this state of affairs would last. At the time I met with Mr. Patarkatsishvili, he was still able to travel freely to Moscow and so far as I am aware, still had his direct connections with

President Putin. It was not out of the question that, within a few months, Mr. Berezovsky would be back in Russia. Mr. Berezovsky had a reputation for bouncing back against all odds. I remember that in 1994 there was an attempt on his life, and he had to move to Switzerland. Many people I knew at the time thought that Mr. Berezovsky was finished, but he returned to Russia and became more powerful than before. Similarly, late in 1997 it became known that President Yeltsin had become tired of Mr. Berezovsky; but then, in April 1998, Mr. Berezovsky succeeded in getting himself appointed Executive Secretary of the CIS. Similarly, Mr. Berezovsky once injured his spinal cord, an injury that would normally leave someone paralyzed for life, but not him. On another occasion he contracted Hepatitis C which would have been the end of some people, but, after a period of looking a little yellow, he bounced back! He was quite an extraordinary person and the normal rules seemed not to apply to him.

275. So, although by the time I met with Mr. Patarkatsishvili in Courchevel, Mr. Berezovsky had clearly fallen out of favour with President Putin, I could not be certain that he would not regain influence in Russia. My only wish was to finalise all relations with Mr. Berezovsky and avoid an open conflict since this could have negative repercussions for me and Sibneft at a future date.

276. As far as I was concerned, by agreeing to make a single last huge payment, I was 'buying myself my freedom' from any association with Mr. Berezovsky and our krysha relationship. If, in his own mind, Mr. Berezovsky had by now convinced himself that what I was bullying him out of was his and Mr. Patarkatsishvili's 'rights' to 50% of Sibneft or 50% of 'me' then I can say without any doubt that he and Mr. Patarkatsishvili gave me every reason to believe that they accepted the ultimately agreed price tag of $1.3 billion willingly and gladly.

277. As I said above, for me this was not only a business decision, but also a personal one since I would have an opportunity to close this particular chapter in my life, and it was very important to put an appropriate full stop at the end of my relationship with Mr. Berezovsky. He had played such a significant role. The $1.3 billion was an enormous amount of money to pay to someone who had already been well

> compensated for his services. Nonetheless, I felt a sense of responsibility for ensuring that he was 'set up for life'; this payment was therefore also my way of saying to Mr. Berezovsky that, no matter what was happening in Russia, I remained loyal and would always respect what he had done for me. But that he should now leave me and Sibneft alone.
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> 278. I never thought of getting Mr. Berezovsky to sign any official release. As I have already explained, krysha is not a legal arrangement or indeed an arrangement which is capable of being reduced to writing or being ended in writing."

766. I accept this explanation. In early 2001, Mr. Berezovsky's position was by no means as weak as it may seem today. He had been a fugitive for only three months. He had been a highly resilient politician in the 1990s. The criminal charges against him had been made and withdrawn before. In his time he had been an ally of President Putin. It was by no means clear that he was finished as a force in Russian politics. In the light of these factors and the very clear sense of obligation which Mr. Abramovich clearly felt that he had towards Mr. Berezovsky and the considerable contribution which Mr. Berezovsky had made to the success of Sibneft, I do not find it surprising either that Mr. Patarkatsishvili and Mr. Berezovsky should have sought to negotiate a final payment or that Mr. Abramovich should have considered it in his interests, and indeed, in a personal way, consistent with his *krysha* relationship, incumbent upon him, to do so.

767. Mr. Rabinowitz strongly challenged Mr. Abramovich in cross-examination about his reasons for agreeing to make the payment[427]. In Mr. Berezovsky's written[428] and oral closing submissions there was likewise a meticulous analysis of why it was contended that the reasons Mr. Abramovich put forward for making the payment were not credible and were "constantly moving, and ultimately incoherent"; it was submitted that the only rational explanation for the payment was that it was the purchase price for the sale of Mr. Patarkatsishvili's and Mr. Berezovsky's Sibneft shares. After a full review of the evidence, however, and despite the force of certain of Mr. Rabinowitz's criticisms of Mr. Abramovich's evidence, I have concluded that Mr. Abramovich's explanation for the payment is to be accepted. He described it in the following way in cross-examination[429]:

> "A. I've described this krysha relationship: this is a very vague understanding and this is not the numbers, this is the relationship. To bring that relationship to a close and not to have any problems with regard to payments, with the nonstop stories that I owe them more and more, to bring that to a close, I was ready to make a final payment and bring this to a close.

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427 See for example Day 23 page 19.

428 Paragraphs 914 - 924.

429 See e.g. Day 23, pages 20 - 22.

Q. By this stage you were no longer friends with Mr. Berezovsky; that's right, is it not?

A. I've explained yesterday, the word "friend", this is a feeling. Certainly I was very grateful to him for what he'd done for me. Certainly I understood and I understand now and moreover I have no regrets because of paying and I would say -- and I wouldn't use the word 'pride', I wouldn't say I'm proud, but I'm very happy with myself this is the way I've done. I wouldn't have done it in any different way. I was very grateful to him that he helped me, I myself would never have achieved results such as these, and therefore I thought that I had to pay him.

The figure could have been disputed but the fact that I owed him to bring this relationship – our relationship to a close and not ever revisit that matter again, this is what I thought: yes, that he did have the right to demand.

Q. You suggest you had no obligation at all and that this just was a goodwill payment of $1.3 billion that you were making to Mr. Berezovsky and Mr. Patarkatsishvili; is that what you suggest?

A. I suggest that never ever had any legal obligations and the krysha relationship is not a legal obligation; this is an understanding. And once you get under the influence, until the relationship is brought to a close, you will have to pay. This is what I'm trying to explain here.

Q. You see, I suggest to you, Mr. Abramovich, that the real and only reason that you were paying the $1.3 billion was because you were acquiring from Mr. Berezovsky and Mr. Patarkatsishvili their interests in Sibneft, and that is right, is it not?

A. I was buying my freedom. I wasn't buying the interest".

768. In the ultimate analysis I found that explanation to be credible. I accept the Russian historical and other evidence that in the 1990s *krysha*-type relationships were a part of the business environment. Put as its simplest, effectively under the arrangement between the three men, Mr. Abramovich had "promised" Mr. Berezovsky and Mr. Patarkatsishvili a slice, and certainly a substantial slice, of the "Sibneft" action, in return for their political influence and protection; it may well be that there were other aspects of the dealings between the three men which the evidence in this trial has not explored. I do not find it surprising that, for the various reasons which he gave, by early 2001 Mr. Abramovich was keen to rid himself of that "obligation". But in order

to do so, Mr. Abramovich was required, by the conventions of *krysha,* to pay a substantial sum. Despite Mr. Rabinowitz's submissions, I do not find it surprising in the least that no assurance was apparently secured by Mr. Abramovich to the effect that Mr. Berezovsky would not thereafter hold himself out as having any association with Sibneft or with Mr. Abramovich; as already described at Section VIII above, it was only in June 2001 that for the first time Mr. Berezovsky actually claimed to have a shareholding interest in Sibneft; any such assurance would have been pointless given Mr. Berezovsky's predilection for engagement with the media, and unenforceable in any event; even a request for such an assurance would have betrayed a negotiating weakness or vulnerability on Mr. Abramovich's part.

769. Mr. Rabinowitz challenged Mr. Abramovich in cross-examination to the effect that his account of the meeting in Megève was "just not credible". In particular, Mr. Rabinowitz suggested that Mr. Abramovich had changed his case from his original defence so as to allege that there were two meetings (instead of just one with Mr. Patarkatsishvili alone), that there were certain inconsistencies in his evidence and that it was largely reconstruction. I do not accept these criticisms, for which Mr. Abramovich had adequate explanations. It was not surprising with the passage of time that certain details had not originally been remembered; obviously to a certain extent his evidence had been reconstructed in the sense of being triggered by reference to the chronology as supported by the travel records and the supporting evidence of other witnesses. But, at the end of the day, I was satisfied that, in its essentials at least, Mr. Abramovich's story was truthful and accurately and honestly recollected.

770. After the meeting at Megève, the negotiations with Mr. Abramovich about the amount and the mechanics for the final pay-out were conducted exclusively by Mr. Patarkatsishvili on his and Mr. Berezovsky's behalf. Because of Mr. Berezovsky's case in relation to intimidation, it is relevant to note that, on 11 April 2001, in the intervening period between the Megève meeting and the subsequent meetings with Mr. Patarkatsishvili, Mr. Glushkov was charged with attempting to escape from custody. As Mr. Abramovich accepted, this charge increased the risk that Mr. Glushkov would not be released from prison. Mr. Berezovsky asserted that this increased the opportunity for Mr. Abramovich to exploit the situation, by using Mr. Glushkov's freedom as a bargaining chip, the precedent for this, it was said, having been established by the case of Mr. Gusinsky in the summer of the previous year.

771. There were probably three meetings between Mr. Abramovich and Mr. Patarkatsishvili in May 2001. The only direct evidence about them was that given by Mr. Abramovich and members of his staff, but Mr. Berezovsky, who had not been at any of the meetings, also gave evidence, based on what he asserted Mr. Patarkatsishvili had told him. The first meeting was at Munich airport on 10 May 2001; this was supported by evidence of Mr. Abramovich's travel documents and Mr. Patarkatsishvili's travel and credit card receipts, which showed that they were both in Munich on that date. There may have been a second meeting in Paris on 15 May 2001, when Mr. Abramovich was in Paris, and Mr. Patarkatsishvili's travel and credit card receipts suggest he was also there. Ms Panchenko was also in Paris at the time, but she has no recollection of attending such a meeting. A third meeting occurred at Cologne airport on 29 May 2001, which was also attended by

Ms Panchenko, an executive at Sibneft and financial adviser to and acting for Mr. Abramovich, and Mr. Fomichev who was acting on behalf of Mr. Patarkatsishvili and/or Mr. Berezovsky.

772. In his fourth witness statement, Mr. Berezovsky had referred only to the meeting on 10 May 2001 at Munich, at which he said that the $1.3 billion was mentioned and that Mr. Abramovich implicitly threatened to prolong Mr. Glushkov's detention, and declared that he was not prepared to pay more than $1.3 billion for his and Mr. Patarkatsishvili's alleged interests in Sibneft. This exchange was said to have occurred at a point in the meeting when Mr. Abramovich and Mr. Patarkatsishvili were alone in the room. Mr. Berezovsky claimed that a report of the threat was relayed to him by telephone by Mr. Patarkatsishvili, apparently from the meeting itself. In his sixth witness statement, served shortly before the start of the trial, Mr. Berezovsky acknowledged that it was "possible" that the Paris and Cologne meetings occurred, and that he may have confused the meetings in Munich and Cologne. I do not draw any inference adverse to Mr. Berezovsky based on the fact that, in the light of the later production of Ms Panchenko's travel records, he changed his evidence as to the date and location of the meeting in this respect. Mr. Abramovich himself had originally admitted that a meeting between Mr. Patarkatsishvili, Mr. Fomichev, Mr. Abramovich and Ms Panchenko had occurred in Munich; he too changed his case, based on the disclosure of the travel records, to assert that the meeting at which Mr. Fomichev and Ms Panchenko were present was the Cologne airport meeting. But, perhaps more surprisingly, for the first time in his oral evidence, Mr. Berezovsky also alleged that, on his return from Munich, Mr. Patarkatsishvili had said to him, in special and significant terms (using the Russian word "zamochit", meaning "to kill"):

> "Borya, you don't understand, they will waste him they will do him in, they will kill him"; ("him" being Mr. Glushkov).

This was colourful evidence, adduced by Mr. Berezovsky with what can only be described as theatrical emphasis. If, indeed, such a comment had been made by Mr. Patarkatsishvili after the Munich meeting, as a result of threats made by Mr. Abramovich at such meeting (which was the thrust of Mr. Berezovsky's evidence), I find it surprising that it was not introduced into Mr. Berezovsky's evidence at an earlier occasion.

773. I find as facts, based on Mr. Abramovich's and Ms Panchenko's evidence, that:

i) at either the Munich or the Paris meetings - it does not matter which - Mr. Abramovich and Mr. Patarkatsishvili, after no doubt some tough negotiation, agreed the amount of the final payment at $1.3 billion;

ii) the mechanics, and form, of the payment were agreed at the meeting in Cologne on 29 May 2001; in particular it was agreed that the method of payment would be cash rather than payment by transfer of securities; it was also agreed that the first $500 million would be paid within a month, and the rest in instalments thereafter;

iii) that at the end of the Cologne meeting everyone parted on friendly terms.

774. But I reject Mr. Berezovsky's allegation, whether it be made in relation to the Munich and/or the Cologne meeting in May 2001, that Mr. Abramovich expressly or implicitly threatened to prolong Mr. Glushkov's detention, or to secure expropriation of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged interests in Sibneft, unless the two men agreed to sell their Sibneft interests to him for $1.3 billion. I have little doubt that there was a negotiation between Mr. Abramovich and Mr. Patarkatsishvili during the course of which the latter demanded a final payment of $2.5 billion to release Mr. Abramovich, and Mr. Abramovich made it clear that he was not prepared to pay more than $1.3 billion, on which figure the parties finally agreed. It may well have been that Mr. Patarkatsishvili, with some justification, regarded himself and Mr. Berezovsky in a weak negotiating position, given their status as exiles, their urgent need for money[430], the undocumented nature of their "interest", and the stance apparently being presented by Mr. Abramovich that he had no keen desire to buy them out. This was certainly the impression given in Mr. Patarkatsishvili's 2005 draft proof of evidence.

775. But the evidence relating to the meetings themselves, and to the context in which they took place, did not, in my judgment, establish that any express or implied threats were made by Mr. Abramovich, to intimidate Mr. Patarkatsishvili, against his will, into accepting a payment of the sum of $1.3 billion, either by reference to the continued imprisonment of Mr. Glushkov or by reference to the expropriation of the alleged Sibneft "interests". I accept Mr. Abramovich's evidence to the effect that no such intimidation took place. I have no doubt that Mr. Abramovich adopted a tough negotiating stance in the discussions with Mr. Patarkatsishvili as to what the final payout figure should be and that Mr. Abramovich took such commercial advantage as he was able to derive from Mr. Berezovsky's and Mr. Patarkatsishvili's weak bargaining position. But I do not accept that Mr. Berezovsky and Mr. Patarkatsishvili were threatened or blackmailed into accepting the figure of $1.3 billion, irrespective of whether it was the agreed purchase price of their alleged interests in Sibneft, or a buyout of Mr. Abramovich's *krysha* obligations.

776. For the purposes of my analysis of the evidence relating to the Sibneft intimidation issue, I accept that Mr. Berezovsky may have genuinely believed that the value of a 50% share in Sibneft was in excess of $2.5 billion, which, according to Mr. Berezovsky's evidence was the figure that he and Mr. Patarkatsishvili had discussed should be put forward to Mr. Abramovich as the figure which they required to be paid[431]. In the absence of the valuation evidence, however, I make no finding as to the objective value of either Sibneft, or of a 50% share of its equity capital at the relevant time. But, even on the assumption that Mr. Berezovsky held that belief, the evidence does not establish that Mr. Patarkatsishvili agreed to the figure of $1.3 billion only as a result of blackmailing threats made by Mr. Abramovich.

Other evidence in relation to the Sibneft intimidation issue

777. Apart from his own evidence, Mr. Berezovsky relied upon the 2007 notes of meetings with Mr. Patarkatsishvili and the draft witness statement subsequently prepared by Mr. Berezovsky's solicitors in 2007 based on those meeting notes, but which was

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430 According to Mr. Patarkatsishvili's 2007 draft proof of evidence, by early 2001 it was clear that he would not be able to return to Moscow and would be forced to live as a political émigré.

431 See paragraph 377 of his fourth witness statement.

never approved by Mr. Patarkatsishvili. I have already explained the circumstances in which the notes, and draft proofs and witness statements were compiled and expressed my views in relation to their relative unreliability. He also relied upon witness statements that Ms. Duncan and Mr. McKim (the 2007 interviewing solicitors) gave as to "their understanding" of Mr. Patarkatsishvili's position following their interviews with him, as to the circumstances in which the alleged Sibneft interests had been disposed of. Mr. Berezovsky also relied on hearsay evidence given by seven of his friends and associates who gave evidence of what they said Mr. Berezovsky had said to them in various times about the "threats" which he said caused him to "sell" out of Sibneft.

The 2005 Patarkatsishvili proofing materials

778. It is necessary to look not only at the 2007 Patarkatsishvili proofing materials upon which Mr. Berezovsky relied, but also, and significantly, at the 2005 proofing materials, upon which Mr. Abramovich relied in this context - at least to a limited extent. The 2005 interview notes undoubtedly suggest that, by 2005, Mr. Patarkatsishvili believed, or at least was asserting, that he and Mr. Berezovsky did have an interest of some kind in Sibneft, which they had "sold" in 2001. This was consistent with the position that Mr. Berezovsky and Mr. Patarkatsishvili had taken since they had begun to move their assets offshore in early 2000. But, as was submitted in Mr. Abramovich's written and oral closing submissions, and as I conclude, even taken at face value, the 2005 interview notes and draft proofs, are inconsistent with the suggestion that intimidation by Mr. Abramovich played any part in the alleged "sale" to which Mr. Patarkatsishvili alleged that he agreed.

779. The 2005 draft proofs of evidence for Mr. Patarkatsishvili were prepared shortly after the interviews with Mr. Patarkatsishvili which took place in Georgia in June and December 2005. The draft proofs of evidence were based on the contemporaneous notes of those interviews, taken by the two solicitors who had attended those interviews in Georgia, Mr. Stephenson of Carter Ruck and Mr. Lankshear of Streathers, both of whom were acting for Mr. Berezovsky at the time.

780. The proof of evidence prepared by the solicitors shortly after the 2005 meeting was in the following terms in relation to the Sibneft intimidation issue:

> "In early 2001 I proposed to BB that we sell our shares in Sibneft. At this time it was clear that I would not be able to return to Moscow and would be forced to live as a political émigré. To live in such circumstances without money is difficult. BB resisted my proposal at first but finally agreed to sell. I spoke with RA. A meeting was set up in Munich in April/early May 2001. RA came to the airport with his wife Irina, and their children. Ruslan Fomichev also attended the meeting. We took a small room (approximately 4 square meters) at the airport. Our asking price for the shares was $2.5 billion, which already represented a discount as the value of the company at that time was at least $6-7 billion. RA refused to meet our asking price. This may have been because he did not have the money, or because he simply did not want our shares that much. It may be that he only wanted to pay out of the

> dividends! I was aware that our shares were held on behalf of RA and that there was nothing in writing to prove our ownership. I was therefore concerned that RA could obtain our shares for nothing.
>
> We agreed a price of $1.3 billion. When negotiating this deal there was no specific mention made of NG but this was not necessary as it was clear that his release was one of the reasons we were prepared to sell.
>
> Following the Munich meeting I kept in contact with RA. He was always complaining that he was experiencing political pressure from the Kremlin. I initiated the sale against the background of complaints from RA. I thought that it was a better option to sell and to relieve the pressure on RA. I believed from what RA said at the time that had we had stayed in the company then there was a risk that the company would have become a target.
>
> Our people were not managing the company. This was a serious problem for us because there was less and less possibility for us to understand exactly what was happening within the company. Over time revenue had increased (due to oil price increases) but dividends had decreased. We should have obtained significantly greater dividends than we did. Official reports made mention of this. We did not challenge RA's people on this issue as we did not want to cloud the relationship.
>
> The $10 million which is mentioned in the Share Purchase Agreement was paid in Russia. This was paid by RA. There is, however, no evidence of payment. In mid 2001 RA agreed to make an initial payment of $500 million."

781. This account is not consistent with the analysis that Mr. Abramovich was implicitly threatening either expropriation of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged Sibneft interests or the continued detention of Mr. Glushkov, unless Mr. Patarkatsishvili agreed to sell at a price of $1.3 billion. There was no indication that Mr. Patarkatsishvili perceived any threat of adverse action by Mr. Abramovich in relation to the alleged Sibneft interests; on the contrary, Mr. Patarkatsishvili appeared to be concerned to relieve pressure from the Kremlin on Mr. Abramovich so as to ensure that Sibneft itself - the golden goose that was providing the funding for Mr. Berezovsky and Mr. Patarkatsishvili - would not become a target. These exchanges showed that, as Mr. Patarkatsishvili saw it, the concern was not that his own or Mr. Berezovsky's interests in Sibneft might be singled out for expropriation by the Russian government, but rather that Sibneft itself would suffer.

782. Critically, Mr. Glushkov was not even specifically mentioned. Although the proof goes on to say that it was unnecessary to mention Mr. Glushkov, because it was in any event clear that "his release was <u>one</u> of the reasons" [emphasis added] that he and Mr. Berezovsky were prepared to sell, Mr. Patarkatsishvili was not recorded as

indicating that either Mr. Glushkov's release or his continued detention was held out as an inducement or threat by Mr. Abramovich. The fact that one of the reasons why they were prepared "to sell" was said to have been the prospect of Mr. Glushkov's release, was not equivalent to any allegation of a promise of his release, or a threat of his continued detention (whether by the State or by Mr. Abramovich), unless a Sibneft related "sale" or payment was agreed. It was clear from the evidence that in 2001 Mr. Patarkatsishvili and Mr. Berezovsky had come under pressure from the State to sell their other media interests and were in negotiation to do so, *inter alia*, because of their concerns and fears about Mr. Glushkov. Such a comment, if truthful, and if relevant to the negotiations with Mr. Abramovich at all, which is questionable, could have equally been explained by the hope or expectation that the State would look more favourably on Mr. Glushkov's release in circumstances where it was informed that all commercial relationships between the two men and Mr. Abramovich had terminated. Moreover there was no suggestion that Mr. Patarkatsishvili was coerced into agreeing to anything; the recognised weakness of his negotiating position was simply a harsh fact of life.

783. The 2005 notes of interviews also confirmed that the initiative for the "sale" came from Mr. Patarkatsishvili and was motivated by his need for money:

> "To live in immigration w/o money difficult. I wanted to sell shares. BB didn't, ultimately said yes. I spoke with RA."
>
> "Conflict with Putin long enough to live abroad without money – talk about sell of shares – after accept – talked to Roman."

The only reference in the notes to what later evolved into the "expropriation" threat was a reference to the fact that Mr. Abramovich was "under pressure from the Kremlin" and that the company (i.e. Sibneft itself) could become a target if he and Mr. Berezovsky continued to be associated with it. The notes recorded:

> "Badri: better option to sell as decrease pressure on RA and allow us to live and oppose regime;
>
> "actually discussing better for Roman - if we stay in company - company a target. → Badri kept contact with Roman - Roman always complaining - experiencing pressure from Kremlin - initiative of Badri - where complaining - better option to sell. + to stop pressure."

784. Dr. Nosova was present at the 2005 interviews and acted as the principal translator. She was also sent a copy of the resulting draft "proofs of evidence" and confirmed in her witness statement that they accurately reflected what Mr. Patarkatsishvili had said. She noted in her witness statement that Mr. Patarkatsishvili frequently required translation and she would also

> "… occasionally clarify some of the answers given by Badri where it was clear that he was having difficulty expressing himself".

785. She did not resile from this in cross-examination, but she gave various wholly unconvincing reasons why she said that Mr. Patarkatsishvili was being "very very careful, very, very cautious" and "guarded", and was holding back significant material (for example, about the alleged Cap d'Antibes meeting), when he was giving his answers to the solicitors. This, she said, was because he was afraid that the answers might "leak out" to Mr. Abramovich, with whom he was negotiating at the time and he didn't want "his negotiating position to be destroyed". For this reason, she suggested that Mr. Patarkatsishvili had not told the truth to Mr. Berezovsky's solicitors[432]. She also suggested that Mr. Patarkatsishvili expressed surprise to her that the solicitors were not asking "more probing questions". I do not accept her evidence in this respect. It was self-serving, shifting and not credible. The meetings were being held in private. They were attended only by Dr. Nosova herself and Mr. Berezovsky's lawyers. She was unable to give any satisfactory reason why there was a need for Mr. Patarkatsishvili to be "guarded". Most importantly, her evidence was contradicted by Mr. Stephenson's evidence, who said that Mr. Patarkatsishvili appeared to respond freely to his and Mr. Lankshear's questions.

The 2007 Patarkatsishvili proofing materials

786. Contrary to Mr. Rabinowitz's submissions, I cannot place any real reliance upon the 2007 Patarkatsishvili proofing materials as supporting Mr. Berezovsky's case in relation to the Sibneft intimidation issue. Even if they could be superficially regarded as doing so, given the circumstances in which they came into existence (which I have already described above), and, in the absence of any cross-examination of Mr. Patarkatsishvili, any weight that could be attached to them would be minimal. I was not prepared to accept such evidence as rebutting Mr. Abramovich's account of what was said and what was not said at the May 2001 meetings. This was not least because of the inherent danger in regarding notes of interviews, and draft proofs or witness statements never approved by Mr. Patarkatsishvili, as actually recording his genuine recollections at the time, as opposed to information based on what Mr. Berezovsky himself had said at the meetings.

787. A paradigm example of notes or draft proofs being susceptible to multiple interpretation was Mr. Stephenson's note of an interview with both Mr. Berezovsky and Mr. Patarkatsishvili in April 2007. His notes record:

> "ORT/Sibneft/RusAl
>
> Badri thinks deal fair on Sibneft –
>
> Badri not party – witness".

788. Despite what would appear to be the clear meaning of the statement (viz. that Mr. Patarkatsishvili thought that the deal was "fair" in relation to Sibneft, which was consistent with his recorded position, in the June 2005 proof of evidence, that he regarded himself as having freely negotiated it, despite the recognition of his weak negotiating position), Mr. Stephenson suggested in his witness statement and oral evidence that it did not refer to Mr. Patarkatsishvili's views. He said that he believed:

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[432] Nosova Day 12, page 63; Nosova 2nd witness statement, paragraphs 379-380.

> "the note … related to questions Mr. Berezovsky put to me as to the possible effect if Mr. Patarkatsishvili did not agree to join in the proceedings as a co-claimant and as to whether he could join later if he so wished".

789. In cross-examination, he accepted that there was nothing in the note specifically recording any discussion of Mr. Patarkatsishvili joining the proceedings[433]. However, he continued to maintain the suggestion that the note was a record of Mr. Berezovsky asking whether it would give the impression that Mr. Patarkatsishvili thought the deal fair on Sibneft, if he were not also a party to these proceedings[434]. Mr. Stephenson did not suggest that he had a clear recollection of the matter, but, whether he was right or not, which in the ultimate analysis does not matter, his evidence served to show how dangerous it was, given the circumstances in which the notes were compiled, to rely upon what was recorded as an accurate record.

790. Mr. Rabinowitz, however, submitted that various notes of the 2007 meetings, contained "a number of illuminating records". In particular he relied upon:

i) Mr. Stephenson's note of the meeting at Mr. Patarkatsishvili's English home in June 2007, which stated:

> "Sibneft
>
> **Roman all the time play** – TV – not able to deliver – not my decision – Putin – **sensitive with Sibneft** – Putin
>
> **No choice – believe them all the time** – if not do it take it for nothing, like with Yukos –
>
> RA – he approached us – did not plan to sell – price would go up – understood RA difficult – Putin press me –why give money to BB –
>
> I don't know what to do.
>
> …
>
> Badri – ORT / Sibneft / RusAl
>
> **They can take for nothing** – position so –
>
> we will get everything.
>
> …
>
> **If sell everything +Putin [don't] push me-**
>
> **Easy to get NG out**." [Emphasis added by Mr. Rabinowitz];

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433 Stephenson Day 13, pages 156-158.

434 Stephenson Day 13, page 158.

ii) Mr. Lindley's note of the same meeting, which stated:

> **"RA –played game etc concerning NG – if don't sell**
>
> **They would take it for nothing**
>
> -agreement-
>
> Sale of Sibneft – RA – approached – BP/AP – did not
>
> intend to sell – BUT RA had a difficult position –
>
> PUTIN press him why give money to BB etc
>
> Munich airport – meeting to discuss the sale of Sibneft
>
> …
>
> -$1.3 billion
>
> **-not based on numbers/value**
>
> **-can take these assets for nothing**-so should
>
> Get whatever **they** want-
>
> ORT aginst-AP was correct-
>
> Agreement accept-release of-NG
>
> -SIBNEFT-BB not involved in the negotiations
>
> AP-position should get something and in time
>
> …
>
> **-if sold shares Glushkov released-all solution**
>
> Sell everything would be able to release
>
> NG – less incentive to keep Glushkov in Jail". [Emphasis added by Mr. Rabinowitz]

791. But as I have already described, these were disparate discussions at which Mr. Berezovsky and Dr. Nosova were also present, as well as the lawyers and Dr. Dubov. The notes do not distinguish clearly whose words were being recorded at any one point. By this time, Mr. Berezovsky had started his proceedings against Mr. Abramovich and, in the light of his participation in the proof-taking process, the whole thrust of the discussion is likely to have been self-serving and driven by Mr. Berezovsky's agenda. Moreover, even then the notes do not unambiguously record any clear or specific threat being made by Mr. Abramovich either in relation to expropriation or in relation to the continued detention of Mr. Glushkov; for example, they appear to record Mr. Berezovsky's and Mr. Patarkatsishvili's perception that the

sale of the Sibneft shares would simply give the Russian authorities "less incentive to keep Glushkov in jail".

792. So far as the November 2007 meeting with Mr. Patarkatsishvili in Tel Aviv was concerned, it was clear, as Ms Duncan described in her oral evidence, that Mr. Berezovsky did most of the talking. The following extract from her cross-examination, together with the quoted extract from Mr. McKim's witness statement, gives a good flavour of the limited extent to which one can rely upon what was recorded by the solicitors as being Mr. Patarkatsishvili's own genuine, and un-prompted, recollection:

> "Q. Now, again, going back to Mr. McKim's statement, the second sentence of paragraph 23, he says:
>
> 'When Mr. Berezovsky was explaining matters to us it was sometimes difficult to know whether he was explaining his personal knowledge of events, whether he was explaining his and Mr. Patarkatsishvili's joint recollection or whether he was translating Mr. Patarkatsishvili's answers directly.'
>
> Presumably you agree with that?
>
> A. Well, not entirely because I think, as I've said, on the whole Badri attempted to answer the questions that – or Badri spoke in English to us directly as regards his recollection. So there are certain bits of my notes that I quite clearly just remember Badri telling us directly in English; there are other parts where, yes, Mr. Berezovsky appeared to be translating for him.
>
> Q. But since -- and when Mr. Berezovsky was translating, you weren't in a position to know whether the translation was accurate or not?
>
> A. No."

793. Ms. Duncan's note of the November 2007 meeting, which was the only note of the meeting which survived, did not suggest that Mr. Patarkatsishvili understood the comments being made by Mr. Abramovich as a veiled threat that he would cause the Kremlin to expropriate Mr. Patarkatsishvili's and Mr. Berezovsky's "interests" in Sibneft. The thrust of the account was directed at the weakness of Mr. Berezovsky's and Mr. Patarkatsishvili's bargaining position and the pressure allegedly being applied upon Sibneft and upon Mr. Abramovich by President Putin and the Kremlin, because Mr. Berezovsky and Mr. Patarkatsishvili were his partners.

794. Similarly, insofar as her note of the November 2007 meeting referred at all to the alleged threat made at the May 2001 meetings by Mr. Abramovich in relation to Mr. Glushkov's continued detention, it simply read as follows:

> "NG not ment directly at mtg in Munich b/c others there – oblique ref 'u rem our main pt'."

795. In the subsequent version of the draft proof prepared by the solicitors, this evolved into the following narrative:

> "When negotiating this deal there was no specific mention made of NG but this was not necessary as it was clear that his release was one of the reasons we were prepared to sell. We did not mention Glushkov by name, due to the presence of Irina and Ruslan Fomichev, but I asked Roman whether he was aware of 'our main issue' and he confirmed that he knew what I meant."

At this juncture, the impression which was being given was that the reference by Mr. Patarkatsishvili to the "main issue" was being made in the presence of Ms Panchenko and Mr. Fomichev. In cross-examination, Mr. McKim said that he thought it probable (but not certain) that he was expressly told at the Tel Aviv meeting about the alleged confirmation by Mr. Abramovich; but he also acknowledged that he was quite sure that he was not told what the form the confirmation took, whether a nod, a wink, a "yes" or some other form[435]. As was submitted in Mr. Abramovich's written closing submissions, even on the assumption that there was a confirmation in some unspecified form, it cannot have amounted to more than, at most, an acknowledgment by Mr. Abramovich of Mr. Patarkatsishvili's concerns or hopes or expectations; a confirmatory wink or nod on the part of Mr. Abramovich, in response to an oblique reference by Mr. Patarkatsishvili, could not possibly have been understood as a "threat" on the part of Mr. Abramovich to procure Mr. Glushkov's prolonged imprisonment.

796. Significantly, later drafts of Mr. Patarkatsishvili's "proof", into which Mr. Patarkatsishvili had had no input at all, were in due course amended by Mr. Berezovsky's solicitors to insert the following passages:

> "65. A meeting was set up in Munich in April/earlyMay 2001 to finalise a deal and agree a price. Roman came to the airport with his financial manager Irina Panchenko. Ruslan Fomichev also came with me, although neither he nor Ms Panchenko were present for the bulk of the discussions between me and Roman."
>
> 69. Roman also indicated that, although Glushkov had not been released from prison after the sale of ORT, if we sold our interests in Sibneft then Glushkov would be released. There was no mention of Glushkov in the presence of Mr. Fomichev and Ms Panchenko but after they had returned I asked whether he was aware of 'our main issue' and he confirmed that he knew what I meant."

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435 McKim Day 16, pages 45-46.

797. In other words the revision suggested, for the first time, that there had indeed been an express mention of Mr. Glushkov by Mr. Abramovich at what was in fact the Cologne meeting in May 2001, in the absence of Mr. Fomichev and Ms Panchenko, and that an express inducement had been made by Mr. Abramovich in relation to his release. The clear inference I drew was that the revision was made in order to square Mr. Patarkatsishvili's witness statement with the allegation made in the Particulars of Claim that Mr. Abramovich had indeed made a direct statement at the meeting in Munich, in the absence of Mr. Fomichev and Ms Panchenko, that could have been construed as a threat in relation to Mr. Glushkov[436]. It was plain that such revision was inconsistent with what had been actually said by Mr. Patarkatsishvili in 2005 and in the 2007 Tel Aviv interview. Furthermore, in cross-examination, Mr. McKim acknowledged that this different version of events had not arrived from information "directly"[437] provided by Mr. Patarkatsishvili but from some other source - in the circumstances that would necessarily have been either Mr. Berezovsky or one of his assistants. What can only be described as the creative crafting of Mr. Patarkatsishvili's proposed witness statement, leads me to have little confidence in the reliability of the 2007 proofing materials as corroborative evidence of Mr. Berezovsky's case in relation to the Sibneft intimidation issue. It was plain that the solicitors had specifically asked Mr. Patarkatsishvili what had been said at the Munich/Cologne meeting about Mr. Glushkov and Mr. Patarkatsishvili had said that there had been no direct mention at the meeting of Mr. Glushkov; that account had been reflected both in his 2005 draft proof and in Ms Duncan's note of the 2007 Tel Aviv meeting. Mr. Berezovsky's attempt in cross-examination (when referred to the 2005 draft proof) to explain this away as being:

> "But again, just note of the solicitors … who met him and understood in this way, and we had a lot of examples that solicitors understood not correctly".[438]

was not impressive.

The evidence of Mr. Berezovsky's solicitors as to Mr. Patarkatsishvili's recollections

798. Mr. Rabinowitz additionally sought to rely on the evidence given by Ms Duncan and Mr. McKim as to Mr. Patarkatsishvili's recollections relevant to Mr. Berezovsky's claim. Mr. Rabinowitz submitted that, whatever were the defects with the notes or the draft proof of evidence, if taken in the abstract, because of their susceptibility to multiple interpretations, the real value of the evidence given by Mr. Berezovsky's solicitors of their meetings with Mr. Patarkatsishvili lay in the impression which the solicitors gained overall as to his recollections. He asserted that there had been no specific challenge of certain of the paragraphs of Ms Duncan and Mr. McKim's witness statements where they summarised their impressions of Mr. Patarkatsishvili's recollections.

799. I cannot attach any, or any significant, weight to the evidence of Ms Duncan and Mr. McKim as to "their understanding" of Mr. Patarkatsishvili's position following

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436 See paragraph 14 of the original Particulars of Claim dated 6 September 2007 (signed by Mr. Berezovsky), and paragraph 46(1) of the second version of the Particulars of Claim dated 8 January 2008 (also signed by Mr. Berezovsky).

437 McKim Day 16, pages 50-52.

438 Berezovsky Day 7, page 149.

their interviews with him. First, whilst Mr. Daniel Jowell QC, one of Mr. Abramovich's counsel, who cross-examined these witnesses, may not expressly have challenged the specific paragraphs in which they summarised their alleged "understandings", he clearly and thoroughly challenged the basis upon which they felt able to express such views, and the validity of their conclusions. Second, such evidence, given many years after the event was of very limited value in any event. Third, some of the answers which they gave about their impressions I found to be unreliable, as I did with certain answers given by other solicitors involved in the Patarkatsishvili proofing exercise. This itself was not surprising, given the passage of time and the circumstances in which the interviews took place. Fourth, and most importantly, Ms Duncan's and Mr. McKim's recollections of the 2007 meetings with Mr. Patarkatsishvili were necessarily informed not just by what Mr. Patarkatsishvili had said, but also by what Mr. Berezovsky himself had said or had translated as being Mr. Patarkatsishvili's recollections. As Mr. McKim acknowledged, at the end of the meetings his understanding of Mr. Patarkatsishvili's position on the various factual issues could have been drawn from any combination of what Mr. Berezovsky said, from what Mr. Patarkatsishvili said and from Mr. Berezovsky's "translations"[439].

The significance of Mr. Patarkatsishvili's position

800. There is a final point to be made at this juncture in relation to Mr. Patarkatsishvili's position. If Mr. Patarkatsishvili had believed that the claims made in these proceedings by Mr. Berezovsky were justifiable, he could, at least up until June 2007, when the English limitation period expired, have himself made similar claims. But, up to the time of his death in 2008, he had never advanced such claim, but, on the contrary, had always given the impression to Mr. Abramovich and Mr. Shvidler that he was happy with the payments which had been made[440]. Of course, there might have been all kinds of understandable personal and commercial reasons why Mr. Patarkatsishvili might not have wished to have become involved as a co-claimant with Mr. Berezovsky, in what was undoubtedly going to be expensive litigation, notwithstanding that Mr. Patarkatsishvili might have believed that he and Mr. Berezovsky had a good claim against Mr. Abramovich. But there was never any suggestion made by Mr. Patarkatsishvili to Ms Duncan, or to any of Mr. Berezovsky's other solicitors, that he was considering becoming a co-claimant.

801. Whilst the point is of very limited significance in the overall context, I nonetheless find it somewhat surprising, if Mr. Berezovsky's case in relation to Sibneft (and indeed in relation to RusAl) were evidentially correct, that, prior to his death in 2008, Mr. Patarkatsishvili does not appear even to have communicated his support for Mr. Berezovsky's claims to Mr. Abramovich.

Mr. Berezovsky's hearsay evidence

802. In an attempt to corroborate his account of the events relating to the Sibneft intimidation issue, Mr. Berezovsky relied upon seven witnesses who gave evidence of what they said Mr. Berezovsky had said to them at various times about the "threats" which he said had caused him to "sell" out of Sibneft. Mr. Berezovsky relied upon this evidence to rebut the suggestion that his case in relation to the Sibneft

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439 McKim Day 16, pages 37-38.

440 Abramovich 3rd witness statement, paragraph 313; Shvidler 4th witness statement, paragraph 117.

intimidation issue was recent fabrication. I found that the evidence of these witnesses was of very limited assistance in enabling me to reach my final conclusion on this issue. None of the witnesses were directly involved in the relevant events. Even where such evidence of recollection was honestly given, I could attach very little weight to it. Much of the evidence of allegedly previous consistent statements was plainly influenced by the personal loyalties of the particular witness to Mr. Berezovsky; they all gave the impression of being keen to support evidence that had previously been given by him. Many of such witnesses had been, and continue to be, beneficiaries of his financial largesse. Their evidence was clearly susceptible to having been influenced, even if only unconsciously, by personal loyalties and wishful thinking, particularly where the witness had had a significant part in the preparation of Mr. Berezovsky's case. Necessarily it was very hard for such witnesses to distinguish, many years after the event, between different occasions on which he or she has discussed the same subject with Mr. Berezovsky.

803. The first of such witnesses was Dr. Nosova, one of Mr. Berezovsky's most loyal supporters. As I have already described, she and her husband, Mr. Lindley, had a very large financial interest in the outcome of this litigation[441] under contingency agreements with Mr. Berezovsky, the existence of which she had failed to disclose. She gave a lengthy account in her witness statement purporting to corroborate Mr. Berezovsky's account of the alleged intimidation relating to Sibneft. For example in her second witness statement she said that:

> "299 During the first months of 2001, I continued to have frequent discussions with Boris and Badri about Nikolai. I understood that, even though Nikolai had not been released as Mr. Abramovich had said he would following the sale of ORT, Mr. Abramovich was still trying to push Boris and Badri to sell Sibneft to him."

804. She went on to describe how, at a meeting with Mr. Berezovsky at Cap d'Antibes in April 2001, after Mr. Glushkov's arrest for allegedly having attempted to escape jail, Mr. Berezovsky had said to her that Mr. Abramovich had told Mr. Patarkatsishvili and Mr. Berezovsky that Mr. Glushkov would only be released, if they sold him their interest in Sibneft, and that otherwise he would stay in prison for a very long time. But, even if I were to accept her as a witness who did her best to give truthful evidence, that account was not consistent with Mr. Berezovsky's case, which was that the threats relating to Mr. Glushkov in the context of the disposal of the Sibneft interests, were not made until a meeting between Mr. Abramovich and Mr. Patarkatsishvili at a German airport in May 2001, and then were only made to Mr. Patarkatsishvili. Given my serious doubts as to her credibility, and because of its inconsistency with Mr. Berezovsky's case, I do not accept her evidence; if there had been any conversation as between her and Mr. Berezovsky in relation to Mr. Glushkov in April 2001, I agree with Mr. Abramovich's submission that the likelihood was that it only related to the negotiations between the Russian state and Mr. Berezovsky and Mr. Patarkatsishvili concerning the disposal of a television station owned by them, TV6, in connection with which there was some evidence to

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[441] They each stood to receive 1% of any recoveries which Mr. Berezovsky might make from Mr. Abramovich.

suggest that pressure was being put on the two men by the Russian state to sell their interests.

805. The second witness who gave evidence in relation to this issue was Mr. Goldfarb. His evidence added nothing that was of any assistance to my evaluation of the evidence as given by Mr. Berezovsky and Mr. Abramovich respectively. Mr. Goldfarb simply said:

> "65 I was not *involved* in the mechanics of the sale of the shares in Sibneft, however I was aware that it was happening at the time. I recall that Boris and Badri seemed angry after the deal had been done. Boris told me that they did not get the price that they should have got for their shares because they had been forced to sell them under pressure."

Mr. Goldfarb sat through almost the entire trial and, as I have already described, is clearly loyal to Mr. Berezovsky.

806. Mr. Gluskhov was the third witness who gave evidence in this context. In his witness statement he said:

> "***Sibneft***
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> 224 While I was at the Haematological Centre, on some days, one of the people close to me was able to visit me. He was in contact with Badri, and told me that Badri had told him about the sale of Sibneft, and that everything was being done to secure my release. My lawyers were also telling me that negotiations were under way with regard to Sibneft and that, no matter what, I would be released.
>
> 225 After Sibneft was sold, and I was still not released, I sent a message with my lawyer, Mr. Borovkov, to Boris that he should not sell any more assets to secure my release.
>
> 226 I am very grateful for Boris and Badri's efforts to obtain my release, and sorry that those efforts did not prove to be successful. I am sure that Boris and Badri would not have wanted to sell ORT and Sibneft. In particular, they were resources in the fight against President Putin.
>
> 227 I thought that President Putin was behind the sale of ORT, given the press exchanges and well-publicised meetings between Boris and President Putin in 2000, and ORT's enormous political influence. I did not, and do not, know what degree of influence Roman had in that sale. However, in relation to Sibneft, I had no

> doubt that the Sibneft sale (from which Roman stood to benefit financially) was a measure of Roman's influence and, at the time, I did not connect it to Putin."[442]

807. Even if I were to accept this hearsay evidence of what Mr. Glushkov was apparently being told at the time, it does not assist me. Again Mr. Glushkov, understandably perhaps, as Mr. Berezovsky's closest friend, is a very loyal supporter of Mr. Berezovsky's cause. I have had to approach his evidence with a considerable degree of caution. Neither Mr. Glushkov, nor his lawyer, Mr. Borovkov, made this point in connection with the alleged sale of Sibneft interests[443] in their witness statements in Mr. Glushkov's asylum proceedings, although it would certainly have been relevant to the case which Mr. Glushkov was then presenting. This is particularly significant because, in his asylum statements, Mr. Glushkov went to great lengths to describe how he was used as a "hostage" in connection with the Russian authorities' "blackmailing" Mr. Berezovsky and Mr. Patarkatsishvili to sell their ORT shares. If similar tactics had been employed in relation to his continued detention in the context of the alleged sale of Mr. Berezovsky's Sibneft interests, it would have been surprising if that issue had not been deployed in his asylum application. Perhaps aware of this lacuna, Mr. Glushkov attempted to explain in his trial witness statement that, at the time of his detention, he did not connect President Putin to the Sibneft sale. But that is hard to reconcile with the assertion in that statement that, after the Sibneft sale, he told Mr. Berezovsky not to sell any further assets to secure his release. Moreover, by the time of his asylum application, he would have discussed the matter with Mr. Berezovsky. There were also a number of other anomalies and inconsistencies in Mr. Glushkov's evidence which persuaded me that his evidence was not reliable.

808. Mr. Voronoff was the fourth witness who gave hearsay evidence on this topic. He said that he had spoken to Messrs Berezovsky and Patarkatsishvili in early 2001 and been aware of the "pressure" being brought to bear on them to sell their alleged interest in Sibneft, and that he had spoken to Mr. Patarkatsishvili about this in June 2001. He said:

> "What I do clearly recall is that Badri told me about the Munich airport meeting, and the pressure that Boris and himself were under to sell their shares in Sibneft. Badri said that Mr. Abramovich had told him that there had been some hitch about Nikolay's release, and that he was sorry – but that if Boris and Badri sold Sibneft, Mr. Abramovich would do everything he could to try to get Nikolay released. Badri said that Mr. Abramovich had also told him that otherwise Sibneft would be taken away from Boris and Badri, and they would be left with nothing."[444]

But, for example, the suggestion that at the Munich meeting Mr. Abramovich had expressly mentioned Mr. Glushkov, was directly contradicted by the Patarkatsishvili

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442 Glushkov, paragraphs 224-225.

443 See paragraphs 83 to 85 of his statement dated 19 July, 2006 in support of his asylum application.

444 Voronoff, paragraphs 48-49.

2005 interview notes. Moreover, in cross-examination Mr. Voronoff accepted that it was hard to distinguish between the various conversations which he had had with Messrs Berezovsky and Patarkatsishvili about the events in issue over the years. The following passage gives a flavour of the high water mark of the quality of his evidence about what Mr. Berezovsky and Mr. Patarkatsishvili had told him over the years about their alleged Sibneft interests:[445]

> "Q. Do you mean to indicate by that that you understood that at some point they directly owned 50 per cent of Sibneft, in the sense of either owning it themselves or through corporate entities that they owned?
>
> A. Neither really. You know, I didn't really think of how exactly. I mean, I was pretty sure -- if I was questioned at that time, I would be pretty sure to say that not directly, but in actual fact, so de facto rather than de jure.
>
> Q. And are you saying that that is the conclusion you drew from behaviour and meetings you witnessed or are you saying it's something you recall specifically being told by Mr. Berezovsky or Mr. Patarkatsishvili?
>
> A. I recall specifically being told by Boris and Badri on many occasions but not like, 'Look, I want you to sit down and listen to this, I'm going to tell you now'. It was really pretty much common knowledge. It was a fairly close circle of people and certain things were just taken entirely for granted and this one was – was one of them.
>
> Q. You were taking it for granted that they had an interest in Sibneft?
>
> A. Well, no, no, not for granted. I mean, we were told but it's not -- like I said, it was mentioned many times in various contexts, in many conversations, you know, so obviously I took it like that.
>
> Q. It must now, in 2011, be very difficult to distinguish any one conversation you had with Mr. Berezovsky or Mr. Patarkatsishvili with any other?
>
> A. Well, it's hard. But, you know, it was mentioned on numerous occasions because I spent a lot of time with them, you know, and -- with Boris and Badri and we'd talk about a lot of different things. Sibneft was definitely one of them, many times, and the general nature of the relationship with Roman was discussed

[445] Voronoff Day 12, page 144.

> many times. And so it was really something that was mentioned numerous times."

809. I did not feel able to place any reliance upon Mr. Voronoff's evidence of what he asserted he had been told by Mr. Berezovsky or Mr. Patarkatsishvili as corroborative of Mr. Berezovsky's case.

810. Another friend of Mr. Berezovsky, Mr. Pompadur, also gave evidence to the effect that he had recalled seeing Messrs Berezovsky, Patarkatsishvili and Voronoff in June 2001, and being told that Mr. Berezovsky and Mr. Patarkatsishvili had been "forced to sell out" of Sibneft[446]. However, he had "quite often" discussed Mr. Berezovsky's allegations both with Mr. Berezovsky and "more frequently" with Mr. Voronoff. He agreed that it was difficult to remember when he was first told some particular part of the story[447].

811. Mr. Nevzlin gave evidence, in his witness statement to the effect that Mr. Berezovsky had told him that he had been blackmailed by Mr. Abramovich[448]:

> "Mr. Berezovsky and Mr. Patarkatsishvili told me that they had been blackmailed by Mr. Abramovich, with the threat that unless they sold Sibneft then they would have it taken from them in any event and Nikolai Glushkov (who had been imprisoned in late 2000) would not be released.
>
> Mr. Berezovsky and Mr. Patarkatsishvili told me that Mr. Abramovich had taken the line of pretending not to be responsible for what he was threatening, suggesting that he was merely a messenger and was neutral, and that if Mr. Berezovsky and Mr. Patarkatsishvili did not do as he suggested then "they'' would take Sibneft and keep Mr. Glushkov in prison."

812. It was clear from the evidence which he gave in cross-examination that Mr. Nevzlin had often discussed the events giving rise to Mr. Berezovsky's claim with both Mr. Berezovsky and Mr. Patarkatsishvili over the years. But it appeared that it was only in 2004, at a meeting in Israel, that Mr. Patarkatsishvili had, for the first time, told him about Mr. Abramovich's alleged promise to release Mr. Glushkov[449]. As a result of his business dealings with Mr. Abramovich, which he described in his witness statement, he did not like him[450]. I could not place any reliance upon this very general evidence by Mr. Nevzlin.

813. Mr. Michael Cherney, a former Ukrainian, and now Israeli, businessman, made a witness statement in support of Mr. Berezovsky's case. In relation to the Sibneft intimidation issue he said that, at a meeting in England with Mr. Berezovsky and Mr. Patarkatsishvili in November/December 2007:

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446 Pompadur, paragraph 19.
447 Pompadur Day 24, pages 69-70.
448 Nevzlin, paragraph 41.
449 Nevzlin Day 15, page 79.
450 Nevzlin Day 15, page 56.

> "… I also asked Mr. Berezovsky and Mr. Patarkatsishvili why they had sold their interests in Sibneft and in media concerns (like ORT) so cheaply (which fact Mr. Berezovsky had previously told me about). They replied that this had been as a result of threats made to them by Mr. Abramovich in relation to Mr. Nikolay Glushkov, their manager who had been imprisoned in Russia (which fact had been widely covered in Russian press at the time). They told me that the threats had been to the effect that if they did not agree to the sale price, Mr. Glushkov would remain in prison and their interests in Sibneft and the media businesses would anyway be expropriated by the Russian state."

814. Although the Court made an order permitting Mr. Michael Cherney to provide his evidence by video link, he was not prepared to attend trial and to have his evidence tested by cross-examination. The reasons for his refusal to do so were set out in a letter from his solicitors to Mr. Berezovsky's solicitors dated 18 October 2011. These included the fact that he was currently engaged in litigation in this court against one of Mr. Abramovich's witnesses, Mr. Oleg Deripaska, and did not wish to subject himself to a lengthy cross-examination in Mr. Berezovsky's action, which Mr. Michael Cherney's solicitors described as being "… in the nature of a dress rehearsal for his cross-examination at the trial of his own action" against Mr. Deripaska. Mr. Cherney had apparently lent Mr. Berezovsky substantial sums of money (although, according to Mr. Berezovsky, much less than the $50 million figure put to him in cross-examination). Mr. Berezovsky appeared to have had some financial arrangement with Mr. Cherney under which Mr. Cherney "helps him with my life, not with expenses for litigation"[451]. Mr. Berezovsky said that Mr. Cherney did not stand to gain financially from the outcome of the litigation. However, Mr. Cherney would necessarily be in a better position to obtain repayment of his loan, if Mr. Berezovsky were to win this case.

815. In addition to the evidence which I have quoted above, Mr. Cherney also gave evidence to the effect that he had been told by "several reliable sources" that Mr. Berezovsky had "acquired Sibneft"[452], and that he had also been informed that Mr. Abramovich was Mr. Berezovsky's "business partner"[453]. The sources of this information were not identified.

816. In the absence of cross-examination of Mr. Cherney, I can attach no weight to his evidence as corroborative of Mr. Berezovsky's case. I have no doubt that, had he been cross-examined on his witness statement, he would have been challenged in various respects. In previous High Court proceedings, in which he appeared as a claimant, the Court considered that his oral evidence was "evasive" and "needs to be treated with very considerable caution"[454].

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451 Berezovsky Day 9, pages 148-159.
452 Cherney, paragraph 13.
453 Cherney, paragraph 16.
454 *Cherney v. Neumann* [2011] EWHC 1256 (Ch.) at [26].

Absence of any written record of a sale or release of Mr. Abramovich's obligations

817. Mr. Sumption submitted that if there had really been a sale of Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft rights and interests under the alleged 1995 and 1996 Agreements, or a release of Mr. Abramovich's contractual obligations under such agreements, it was inconceivable that there would have been no document recording the terms on which Mr. Abramovich was paying over the sum of $1.3 billion. Mr. Sumption further submitted that, from Mr. Berezovsky's perspective, if he and Mr. Patarkatsishvili were indeed giving up contractual rights, they would have wanted to ensure that they could enforce the instalment payments against Mr. Abramovich; if, as Mr. Berezovsky said, he contemplated from the start that in due course he would bring proceedings against Mr. Abramovich for compelling him to sell at an undervalue, he needed to have the transaction documented for use in such proceedings; and the transaction would have had to have been documented in order to satisfy the Western banks to which the proceeds of "sale" were going to be transferred. He submitted that the absence of any written record was a significant pointer against Mr. Berezovsky's case that there was a "sale" of his and Mr. Patarkatsishvili's contractual rights and interests to, or in, Sibneft shares, and in favour of Mr. Abramovich's case that the payment was to secure Mr. Abramovich's release from his non-binding *krysha* obligations.

818. Mr. Rabinowitz, on the other hand, submitted that, in circumstances where Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft interests had originally been held under an oral agreement and where the Sibneft shares had been held under Mr. Abramovich's own control, there was no need for any paper record of the transaction; from Mr. Abramovich's point of view, there would have been no need for a receipt as he could have been very confident that he was secure, given the fact that he had paid over $1.3 billion; it was wholly unrealistic to suppose that Mr. Berezovsky would ever have been able to dispute that he had waived, or agreed a transfer of, his contractual interests in Sibneft, in the light of his receipt of so substantial a payment. Further Mr. Rabinowitz submitted that the point ignored the existence of the "Devonia Agreement", a purported agreement between Mr. Berezovsky and Mr. Patarkatsishvili of the first part, Devonia Investments Limited ("Devonia"), a company registered in the British Virgin Islands, of the second part, and Sheikh Sultan Bin Khalifa Bin Zayed Al Nahyan ("the Sheikh") of the third part. Mr. Rabinowitz submitted that the Devonia Agreement contained a number of recitals and operative clauses which documented the fact that Mr. Berezovsky and Mr. Patarkatsishvili were giving up their interests in Sibneft.

819. Once again, although the point is not determinative, I conclude that, for the reasons put forward by Mr. Sumption in his oral closing, and in Mr. Abramovich's written closing submissions, it is surprising, if Mr. Berezovsky's case in relation to the Sibneft intimidation issue were correct, that there was no documentation recording the deal between the parties.

820. By May 2001, Mr. Berezovsky appreciated the importance of recording agreements in writing. Even before his exile from Russia, he had been trying to transfer his assets into offshore structures in the West. As he emphasised in both his written and oral evidence, he was by now familiar with the money-laundering regulations in force in most Western jurisdictions, especially those of the European Union where he had been living since October 2000, and appreciated the need to satisfy the money-

laundering requirements of Western banks[455]. In his fourth witness statement, he explained that he and Mr. Patarkatsishvili appreciated the importance of obtaining documentary evidence of the sale of any asset, in order to satisfy anti money-laundering enquiries from banks and to make it possible to bring an action for the price in a convenient jurisdiction[456].

> "377 Before that meeting [the Munich meeting in May 2001], Badri and I had some discussions about the sale. We had agreed that if there was to be a sale, it would have to be recorded in writing and subject to English law. Badri suggested that he would propose on our behalf a price of $2.5 billion. I didn't agree with that as I thought that our share in Sibneft was worth much more. But Badri was sure that we were in no position to negotiate. I told Badri that undoubtedly he could judge Mr. Abramovich's mood better than I could, and I would support any decision that Badri took regarding the conduct of the negotiations and the final price. At the same time, it was then that I decided and told Badri that the time would come when we would prove in a court in the West that Mr. Abramovich had forced us to sell our shares to him for a knockdown price through threats and intimidation, and we would make Mr. Abramovich compensate our losses. However, at that time we found ourselves locked in a situation where we had no choice as to who the buyer would be and where that buyer in effect held a gun to our heads.
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> …
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> 382 Whether the sale was undertaken directly or via the Sheikh Sultan, it was very important for us that the agreement be in writing and subject to English law, and recording the interest in Sibneft which we were giving up. This was for a number of reasons. First, we wanted to be sure that Mr. Abramovich would not find a way to avoid making payment. Secondly, we wanted to ensure that the reason for the payments being made to us were clearly identified, so that there would not be any question that we were entitled to receive the sums, and to avoid any money laundering concerns. Thirdly, Badri and I were determined to make sure that – one day, when Nikolay was safe – Mr. Abramovich would pay for what he had done to us, and so I wanted our interest to be clearly recorded."

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455 Berezovsky 4th witness statement, paragraph 249; Day 8, pages1-7.

456 Berezovsky 4th witness statement, paragraphs 377, 382.

821. But there was no evidence that either Mr. Berezovsky or Mr. Patarkatsishvili ever asked Mr. Abramovich for a written agreement as, on Mr. Berezovsky's own evidence, one would have expected him to have done if indeed the two men were selling their Sibneft interests. In cross-examination[457], Mr. Berezovsky evaded answering the direct question whether he had ever asked Mr. Abramovich to enter into a written agreement by making reference to the "direct agreement" option which Mr. Abramovich "refused". But he was unable to say when, or in what circumstances, Mr. Abramovich was supposed to have refused this option. The best he could do was to refer in the vaguest of terms to what Mr. Patarkatsishvili was said to have told him about the option not being available.

822. But perhaps even more surprising, if the payment had indeed reflected the purchase price that Mr. Abramovich was paying for Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft related interests, was that Mr. Abramovich himself did not ask for a written agreement, or even a written receipt simply recording the reason why the sum was being paid. Mr. Berezovsky said that he did not remember if Mr. Abramovich ever asked for a document recording the transaction[458]; Mr. Abramovich explained that he never thought of getting a release as that was inconsistent with the *krysha* nature of their relationship[459]. If Mr. Berezovsky and Mr. Patarkatsishvili indeed had had legally enforceable rights in respect of Sibneft, and particularly if Mr. Abramovich had sought to procure their relinquishment by threats, then a businessman in his position, and with the advisers which he had around him at the time, would, in reality, have been bound to have insisted on a written release, in order to ensure not only that claims to an interest were not raised against him in the future, but also that no claims were raised in relation to the "sale" transaction itself. In this context, I reject Mr. Rabinowitz's arguments (that Mr. Abramovich did not need a receipt because, given the payment of over $1.3 billion, it was wholly unrealistic to suppose that Mr. Berezovsky would ever have been able to dispute that he had waived, or agreed a transfer of, his contractual interests in Sibneft) as lacking commercial reality – in particular in the light of the respective characters of the two men.

823. The only document which purports to record any disposition by Mr. Berezovsky and Mr. Patarkatsishvili of their rights in respect of Sibneft is the Devonia Agreement. Even if that was a genuine agreement as between Mr. Berezovsky and Devonia, (and I address the Devonia Agreement in a following section of this judgment), Mr. Abramovich was not a party to it and had no knowledge of it at the time.

Commercial reasons for Mr. Berezovsky and Mr. Patarkatsishvili to have accepted a substantial payment to bring their relationship with Mr. Abramovich to an end

824. I conclude that by early 2001 there were real commercial imperatives which would have driven Mr. Berezovsky and Mr. Patarkatsishvili to have asked Mr. Abramovich for a substantial payment to bring their relationship with him to an end. By May 2001, both Mr. Berezovsky and Mr. Patarkatsishvili were political exiles from Russia. They needed money to fund their lifestyles abroad, at least for the duration of President Putin's administration, the length of which was uncertain.

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457 Day 7, pages 164-165.
458 Day 7, page 167.
459 See Abramovich 3rd witness statement paragraph 278.

Mr. Patarkatsishvili's view appears to have been that he and Mr. Berezovsky were not in a strong bargaining position. Mr. Berezovsky needed the money to fund his political career and, having left Russia, apparently had no other income. Mr. Berezovsky himself admitted that "definitely I need money", before suggesting that that was not his reason to accept the $1.3 billion[460]. Whatever the nature of their arrangements were with Mr. Abramovich, and whatever they thought that their entitlement was under such arrangements, they were entirely undocumented and would have been difficult, if not impossible, to have enforced. They would have appreciated that, given their political status as exiles, they were hardly in a position, in the near future at least, to provide any *krysha* or other services to Mr. Abramovich that would have commanded the quantum of remuneration which they had received from him in the past. They could hardly be certain in their changed circumstances that he would be willing to continue to finance their expenditures. Even if they believed that they were entitled to Sibneft shares, or some sort of interest in Sibneft, they would have appreciated that the value of Sibneft would have been in jeopardy if they had called for the registration of Sibneft shares in their own names or in that of their nominees. Mr. Berezovsky was under criminal investigation in relation to alleged embezzlement of Aeroflot funds and was out of favour with the Russian government. By April 2001, Mr. Patarkatsishvili was also accused of having sought to assist Mr. Glushkov to escape custody. The $1.3 billion payment had the significant advantage for Mr. Berezovsky and Mr. Patarkatsishvili that they were able to receive their money in offshore accounts without tax or exchange control problems, and in Mr. Berezovsky's case, without running the risk that the assets might be frozen by the Russian authorities on account of the criminal investigations against him.

825. These factors support my conclusion that I should accept Mr. Abramovich's evidence that it was Mr. Patarkatsishvili who first raised the concept of a final payment with Mr. Abramovich and that the transaction was one which freely negotiated without the threats or intimidation alleged by Mr. Berezovsky. But I do not go so far as to decide the hypothetical issue raised as Issue 8 of the Agreed List of Issues, namely:

> "… if the [alleged] threats … had been made, did they in fact coerce Mr. Berezovsky into disposing of his alleged rights in relation to Sibneft, or did he do so for other reasons?"

The factual hypothesis for the resolution of that question would have required a total reassessment of Mr. Abramovich's credibility on the assumed basis that he had been lying about the alleged 1995 and 1996 Agreements and/or about what occurred at the May 2001 meetings with Mr. Patarkatsishvili. It is not appropriate for me to embark on that task.

Conclusion in relation to the Sibneft intimidation issue

826. For all the above reasons I reject Mr. Berezovsky's case in relation to the Sibneft intimidation issue. I conclude that Mr. Abramovich did not make either express or implied threats to Mr. Berezovsky and Mr. Patarkatsishvili, with the intention of intimidating them to dispose of their alleged interests in Sibneft, as Mr. Berezovsky has alleged. I also conclude that the sum of $1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili did not represent the sale price of

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460 Day 7, page 160.

Mr. Berezovsky's and Mr. Patarkatsishvili's alleged Sibneft interest, but rather was a final lump sum payment in order to discharge what Mr. Abramovich regarded as his *krysha* obligations.

Section XII - Issue A4: The Devonia Agreement

Introduction

827. Issue A4 of the liability issues, as I have defined them, is:

> "If Mr. Berezovsky had an interest in Sibneft, did he sell it to Devonia Investments Limited under a sale and purchase agreement ('the Devonia Agreement') dated 11 /12 June 2001 between Mr. Berezovsky and Mr. Patarkatsishvili, Devonia Investments Limited ('Devonia' and Sheikh Sultan ('the Sheikh')?"

828. In the Agreed List of Issues, the issue is formulated as follows:

> "9. Did Mr. Berezovsky and Mr. Patarkatsishvili effectively dispose of any of their alleged rights in June 2001 by way of the Devonia Agreement? In particular:
>
> (1) Was the Devonia Agreement capable in law of disposing of any of the rights under Russian law that Mr. Berezovsky alleges he had in respect of Sibneft?
>
> (2) Was the Devonia Agreement a genuine agreement or a sham?"

829. The issues relating to the Devonia Agreement were originally relevant to a number of issues arising in the action: these included:

i) first, the issues as to whether the alleged 1995 and 1996 Agreements were concluded in the terms alleged by Mr. Berezovsky and as to whether Mr. Abramovich intimidated him and Mr. Patarkatsishvili to disposing of such interests (i.e. issues A1 and A3):

   Mr. Berezovsky submitted that the Devonia Agreement demonstrated that Mr. Berezovsky and Mr. Patarkatsishvili did indeed have contractual rights as against Mr. Abramovich in relation to Sibneft, which had effectively been sold, or surrendered, to Mr. Abramovich, after he had made the alleged threats; that supported Mr. Berezovsky's substantive case in relation to those issues, as well as his submissions in relation to Mr. Abramovich's credibility; Mr. Abramovich, on the other hand, submitted that, if the court accepted that the Devonia Agreement was not a genuine transaction, that supported his case on those issues, as well as on the issue of Mr. Berezovsky's credibility;

ii) second, the issue as to whether Mr. Berezovsky had suffered any loss at all, as a result of the alleged intimidation:

Mr. Berezovsky's case on loss was posited on the premise that, because of the alleged threats, he had sold his Sibneft interests under the alleged 1995 and 1996 Agreements at a substantial undervalue pursuant to the terms of the Devonia Agreement, which became effective on 11/12 June 2001, the approximate date on which the agreement appears to have been executed by Sheikh; Mr. Abramovich, on the other hand, contended that the Devonia Agreement was not effective to deprive Mr. Berezovsky of any Russian law rights which Mr. Berezovsky might have had under the alleged 1995 and 1996 Agreements, and therefore Mr. Berezovsky had suffered no loss at all; Mr. Berezovsky's response to this was that Mr. Abramovich was in any event estopped from denying that the Devonia Agreement had any such effect;

iii) third, the issue as to the date on which Mr. Berezovsky had suffered his alleged loss, which was critical for limitation purposes, if the proper law governing the tort was English law: if, as Mr. Berezovsky contended, the Devonia Agreement was a genuine agreement, the entry into which fixed the date of his loss, then it was common ground that, as a matter of English law, his claim was brought within the six-year limitation period as he had issued his claim form on 1 June 2007; on the other hand if, as Mr. Abramovich contended, the Devonia Agreement was a sham, brought into existence for money-laundering purposes, then Mr. Abramovich submitted that the relevant date, was not the date of execution of that agreement, but rather the date on which the final agreement had been made at Cologne airport between Mr. Abramovich and Mr. Patarkatsishvili on 29 May 2001 when the mode of payment of the $1.3 billion was finally agreed and the transaction went forward, the first instalment of the sum being paid to Devonia's bank account on 31 May 2001; in which event, Mr. Abramovich submitted, the claim would be time barred under English law; Mr. Berezovsky, on the other hand, submitted that even if the Devonia Agreement was not the mechanism by which Mr. Berezovsky suffered loss, the relevant date for limitation purposes would be that Mr. Berezovsky lost his rights in Sibneft, and thus suffered loss, at the time when he, and Mr. Patarkatsishvili, first received payment from Mr. Abramovich through the Devonia payment mechanism, namely 12 June 2001, when Devonia first transferred monies to Mr. Berezovsky's and Mr. Patarkatsishvili's bank accounts in the UK;

iv) fourth, the issue as to what was the relevant substantive law governing the alleged tort: Mr. Berezovsky submitted that the fact that Mr. Berezovsky signed the Devonia Agreement in England supported his secondary case that the substantive law of the tort was England; Mr. Abramovich submitted that no assistance in this respect could be derived from the Devonia Agreement, as it was not a genuine transaction.

830. I have only needed to consider the issues relating to the Devonia Agreement for the purpose of determining the issues referred to in subparagraph 829i) above (i.e. issues A1 and A3). Thus, in arriving at my conclusions that Mr. Berezovsky did not have any rights in respect of Sibneft under the alleged 1995 and 1996 Agreements and that Mr. Abramovich did not intimidate or blackmail him into disposing of such rights, I have taken into account, as part of my evaluation of the entirety of the evidence relating to those issues, the evidence relating to the Devonia Agreement. For this

reason, I set out below my findings in relation to the Devonia Agreement, in so far as they are relevant to my determination of those issues.

831. But, given my conclusions in relation to issues A1 and A3, it is not necessary for me to consider the factual issues relating to the Devonia Agreement for the purposes of determining the other issues identified above. That is because, given that I have decided that Mr. Abramovich did not act in a manner that constituted the tort of intimidation, the issues relating to whether:

i) Mr. Berezovsky had actually suffered any loss as a result of having entered into the Devonia Agreement;

ii) the substantive law governing the alleged tort was French, Russian or English; and, consequently,

iii) Mr. Berezovsky's claim was time-barred,

simply do not arise for determination.

Executive summary of my conclusions in relation to the Devonia Agreement

832. My conclusions in relation to this issue may be stated as follows. First, the Devonia Agreement was not a genuine agreement. It was a sham agreement, entered into for the purposes of generating documentation that would give a false impression that a genuine commercial transaction had been entered into, so as to satisfy the money-laundering requirements of the UK bank, into accounts at which the $1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili was, ultimately, going to be paid. Second, Mr. Abramovich was not involved in, or party to, the Devonia Agreement and was not aware of its terms: such limited involvement as there was, at a low level, by members of his accounting staff in what might loosely be referred to as the Devonia Agreement transaction was directed at, and limited to, the mechanics for the payment by an Abramovich controlled company of the $1.3 billion to Devonia's account. Third, contrary to the terms of the Devonia Agreement, there was never any genuine intention that Devonia would "transfer the beneficial interests in the Shares being [purportedly] purchased" under the agreement to Mr. Abramovich or companies or entities controlled by, or associated with, him. Fourth, Devonia never did transfer such interests to Mr. Abramovich or any companies associated with him. Fifth, because it was a sham transaction, the Devonia Agreement did not support Mr. Berezovsky's case in relation to the alleged 1995 and 1996 Agreements or in relation to the Sibneft intimidation issue. Sixth, on the contrary, the evidence relating to the issue, and the fact that Mr. Berezovsky chose to assert that the Devonia Agreement was a genuine agreement, did not reflect well on Mr. Berezovsky's credibility.

The terms of the Devonia Agreement

833. As I have already described above, the Devonia Agreement was an agreement dated on or about 11 or 12 June 2001 (being the date on which the Sheikh apparently signed the agreement) between Mr. Berezovsky and Mr. Patarkatsishvili, described as "the Vendors", of the first part, Devonia, described as "the Purchaser", of the second part and the Sheikh described as "the Guarantor", of the third part, whereby

Mr. Berezovsky and Mr. Patarkatsishvili purported to transfer to Devonia their beneficial interests in specified numbers of shares in Sibneft arising under an express oral trust constituted under English law. The Devonia Agreement was entitled:

> "SALE AND PURCHASE AGREEMENT … AGREEMENT for the sale and purchase of beneficial interests in part of the issued share capital of OAO SIBNEFT"

834. The recitals were as follows:

> "**RECITALS**
>
> (A) **OAO SIBNEFT ('the Company')** is a company limited by shares incorporated in the Russian Federation with an allotted and issued share capital as at the date hereof of 4,741,000,000 shares.
>
> (B) The Company was originally incorporated by the Vendors and Mr. Roman Abramovich and the entire issued share capital thereof was jointly held between the Vendors and Mr. Abramovich
>
> (C) The Vendors are now the beneficial owners of 2,062,335,000 shares in the issued and allotted share capital of the Company ('the Shares').
>
> (D) At the request of the Vendors, Mr. Abramovich procured that the registration of the Shares were legal entities which are directly or indirectly wholly owned and/or controlled by Mr. Abramovich ('the Registered Entities').
>
> (E) The Vendors have agreed to sell and the Purchaser has agreed to purchase all or part of their beneficial interests in the Shares for the consideration and upon the terms and conditions set out in this Agreement.
>
> (F) Mr. Abramovich holds the Shares and/or controls the Registered Entities and through them the Shares as nominee in trust for and on behalf of the Vendors absolutely on verbal arrangements.
>
> (G) The Vendors confirm and are aware that the Purchaser intends hereafter to transfer the beneficial interests in the Shares being purchased hereunder to Mr. Abramovich or companies or entities controlled or associated with Mr. Abramovich.
>
> (H) In consideration of the Vendors entering into this Agreement the Guarantor has agreed to guarantee the obligations of the Purchaser under this Agreement."

835. Clause 2A of the operative part of the agreement provided for the sale by Mr. Berezovsky and Mr. Patarkatsishvili of:

> "all of their beneficial interests … together with all beneficial rights of any nature which are now or which may at any time become attached to them or accrue in respect of them"

in an initial tranche of 79,320,577 Sibneft shares for $100 million. It then went on to grant separate and successive options to Devonia to purchase the Vendors' "beneficial interest" in 12 further tranches of 79,320,577 Sibneft shares for $100 million each. Each successive option only arose, and was conditional upon, the exercise and completion of the option to purchase the prior tranche.

836. Under Clause 4 and Schedule 2 of the Devonia Agreement, each of Mr. Berezovsky and Mr. Patarkatsishvili were required, upon completion of the sale of the first tranche of beneficial interests, to execute and deliver to Devonia "a certificate of transfer of beneficial ownership for 79,320,577 of the Shares", and "such documents as the Purchaser may require to enable the full beneficial ownership of the Shares to vest in the Purchaser." The form of "Vendors Certificate" was provided in Schedule 3 and included the statement by Mr. Berezovsky and Mr. Patarkatsishvili that they:

> "… irrevocably and unconditionally transfer and assign all of my interest, right and title in [ ] shares in the issued and allotted share capital of the Company"

and that, upon receipt of the consideration:

> "… the beneficial interests in those shares detailed in the certificate are the absolute property of the Purchaser and may be freely transferred or assigned to any third party whatsoever without any further consent from myself or any third party".

837. Under Clause 5.1 and Schedule 1 of the Devonia Agreement, each of Mr. Berezovsky and Mr. Patarkatsishvili jointly and severally warranted, represented and undertook to Devonia, *inter alia*, that

i) they were entitled to sell and transfer "the full beneficial ownership in the Shares with full title guarantee to the Purchaser"; and

ii) Sibneft had not exercised or purported to exercise or claim any lien "over the beneficial interest of the Vendors in the shares".

Summary of Mr. Berezovsky's case in relation to the Devonia Agreement

838. Mr. Berezovsky's case, both in closing, as well as in opening, was that the Devonia Agreement was a genuine transaction which supported Mr. Berezovsky's case as to the existence of the alleged 1995 and 1996 Agreements. The terms of the Devonia Agreement, including in particular its recitals, were relied upon as a written or paper record not only of Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft, but also as a record of their effective sale or surrender of such interests to Mr. Abramovich (notwithstanding that the direct sale was to Devonia). It was

contended that, although Mr. Abramovich was not a party to the Devonia Agreement, and did not need to see it, he must have known that Mr. Berezovsky and Mr. Patarkatsishvili were selling their Sibneft interests to a non-Russian entity controlled by the Sheikh under the terms of an English law/jurisdiction agreement. It was further contended that the involvement of Mr. Abramovich's staff in the transaction, such as Ms. Khudyk, and her communications with Mr. Jacobson of Curtis & Co underlined the genuine nature of the transaction, as did the due diligence conducted by Curtis & Co, Clydesdale Bank ("Clydesdale") and Denton Wilde Sapte in relation to it; in particular it was submitted that it was inconceivable that Mr. Curtis would have acted in the way which he did, if he had known or believed the Devonia transaction to be a sham. It was also asserted that there was indeed an on-sale by Devonia of the Sibneft interests sold by Mr. Berezovsky and Mr. Patarkatsishvili to Mr. Abramovich.

The purported subject matter of the Devonia Agreement

839. The first curious feature of the Devonia Agreement is that it purported to be a sale by Mr. Berezovsky and Mr. Patarkatsishvili of their beneficial interests in a specific number of Sibneft shares. But it is no longer Mr. Berezovsky's case that he had any "beneficial interest" in any shares in Sibneft. His claim to have a beneficial interest in such shares was deleted from his particulars of claim by amendment in 2009. As I have already described, his case is that what he acquired under the alleged 1995 and 1996 Agreements were personal and contractual rights against Mr. Abramovich in relation to Sibneft, including profits generated by Mr. Abramovich's trading companies, as a result of Mr. Abramovich's acquisition and control of Sibneft, and, as a result, "common" property rights in any property created or acquired by Mr. Abramovich as a result of the "joint activity" between the three men.

840. In my judgment, it is impossible to construe, interpret or characterise the Devonia Agreement as an agreement under which Mr. Berezovsky and Mr. Patarkatsishvili were assigning all their personal contractual rights against Mr. Abramovich, not only in relation to Sibneft, but also in relation to the profits generated by Mr. Abramovich's trading companies, to the Sheikh's company, Devonia, or as an agreement under which they were assigning "common property" in any property created or acquired by Mr. Abramovich as a result of the joint activity. The express subject matter of the Devonia Agreement was (purportedly) Mr. Berezovsky's and Mr. Patarkatsishvili's beneficial (i.e. proprietary) interests in a specified number of shares in the issued share capital of Sibneft.

841. Mr. Rabinowitz submitted that:

i) The commercial purpose of the Devonia Agreement was plainly for Mr. Berezovsky to give up all the rights he had against Mr. Abramovich in respect of Sibneft; business common sense would thus dictate that the Devonia Agreement be construed so as to achieve this purpose.

ii) This was a case where the contract was open to more than one interpretation; in such circumstances the interpretation to be adopted was one which was most consistent with business common sense; see per Lord Clarke in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50 at paragraph 30,

> "where a term of a contract is open to more than one interpretation, it is generally appropriate to adopt the interpretation which is most consistent with business common sense".

iii) Infelicitous drafting did not prevent the Devonia Agreement having its intended meaning. Lord Hoffmann's well-known injunction in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] AC 1101, at paragraph 21, was to disregard the use of legally inaccurate, and to set no limits to the

> "… 'verbal rearrangement or correction' which is permitted, so long as it is 'clear that something has gone wrong with the language and … [clear] what a reasonable person would have understood the parties to have meant'" (at paragraph 25).

iv) In any event, Mr. Abramovich was wrong to describe Mr. Berezovsky's rights as merely being personal contractual rights: Mr. Berezovsky and Mr. Patarkatsishvili also had common property in any property (including income, fruits and revenues) created or acquired by Mr. Abramovich as a result of the joint activity.

v) The effect, therefore, of the Devonia Agreement was to transfer all of Mr. Berezovsky's rights against Mr. Abramovich and/or in relation to Sibneft to Devonia.

842. I do not accept these arguments. In my judgment it is impossible, even approaching the interpretation of the agreement in the most generous way to Mr. Berezovsky, to construe the Devonia agreement, which by its express terms was an agreement to sell beneficial/equitable ownership in specific quantities of Sibneft shares, as an agreement to assign the personal contractual Russian law rights which Mr. Berezovsky alleged that he and Mr. Patarkatsishvili had against Mr. Abramovich, or any "common property rights" in any property created or acquired by Mr. Abramovich as a result of the alleged joint activity agreement.

843. Moreover, as pointed out in Mr. Abramovich's written closing submissions:

i) The alleged 1995/1996 agreements provided, according to Mr. Berezovsky, for the <u>common</u> ownership by Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili of a bundle of contractual partnership rights to <u>all</u> shares in Sibneft. It would therefore be necessary to read each reference to beneficial ownership of a tranche of 79,320,577 Sibneft shares as a reference to the undivided 50% share held by Mr. Berezovsky and Mr. Patarkatsishvili in twice that many shares.

ii) Mr. Abramovich was said to be the legal owner, and trustee, of the Sibneft shares which were the subject matter of the Devonia Agreement. But Mr. Abramovich never himself directly owned any material number of shares in Sibneft. They were held by companies which he controlled or by banks acting as his nominee. In consequence, in Russian law, the "common property" in relation to which any rights of Mr. Berezovsky and Mr. Patarkatsishvili arose could not have been the shares in Sibneft. As

Dr. Rachkov appeared to concede, it would have to have been some interest in the holding companies or possibly in Mr. Abramovich's right of control over them.

844. Thus, even without consideration of any further factors, the purported subject matter of the Devonia Agreement raised an immediate question over the genuine nature of the transaction which it was purporting to document. Any transaction that purports to reflect the sale of non-existent rights necessarily calls into question its purpose and its authenticity. An agreement which purports to record the sale of rights which Mr. Berezovsky now no longer asserts that he had ever held, must raise even the most indulgent of judicial eyebrows.

The circumstances surrounding the making of the Devonia Agreement

845. But, far more importantly, and leaving completely to one side what might be regarded as legal arguments as to the subject matter or wording of the Devonia Agreement, and as to what, if any, rights or interests it might effectively have disposed of, the circumstances surrounding the making of the Devonia Agreement demonstrated that it was a wholly bogus transaction, entered into for the purposes of providing Western banks with spurious evidence as to the legitimacy of the provenance of the funds being paid to Mr. Berezovsky. It is against that background that one has to evaluate any reliance upon the recitals contained in the Devonia Agreement as supporting Mr. Berezovsky's case.

846. It was common ground between the parties that by 2000, Mr. Berezovsky and Mr. Patarkatsishvili were well aware of the potential problems posed by the money-laundering regulations in force in most Western countries, in particular the EU and the United States. Large cash transfers were likely to provoke enquiries about the source of the funds. These enquiries would have been difficult to answer satisfactorily, unless it could have been demonstrated that the funds represented the proceeds of an identifiable asset to which the fundholder was entitled, or monies to which they were genuinely entitled under a written commercial contract. It was clear that this was a serious problem for Mr. Berezovsky and Mr. Patarkatsishvili, once they left Russia. A substantial amount of the funds which they had hitherto utilised to fund their living expenses and their other activities had ultimately been derived from undocumented Russian sources. In the future, the funds which were going to provide for their future livelihood, including the proceeds of the ORT sale and the $1.3 billion which Mr. Abramovich was going to pay, had to be available to the two men outside Russia, and at least, so far as Mr. Berezovsky was concerned, had to be available in a Western bank, in a country where he could safely live as a political refugee, free from the risk of extradition. As the evidence showed, in 2000 and 2001 the anti money-laundering procedures adopted by Western banks were becoming ever more rigorous, especially where the funds concerned derived from Russia. Satisfying, or circumventing, these procedures was an important and necessary feature of Mr. Berezovsky's and Mr. Patarkatsishvili's business arrangements. It necessarily affected Mr. Berezovsky's and Mr. Patarkatsishvili's dealings with banks and professional intermediaries. This was common ground on the evidence between the parties. It was also clear from the evidence that Mr. Abramovich appreciated Mr. Berezovsky's and Mr. Patarkatsishvili's concerns in this respect and, so far as he was able, was prepared to assist them in their efforts to ensure that any payments made by him or his companies would be accepted on a "legalised" basis by the relevant payee bank

outside Russia; in other words, that the receipt by Mr. Berezovsky and Mr. Patarkatsishvili of such payments would be in a manner that was regarded as compliant by such bank with its anti-money-laundering enquiries and requirements.

The Spectrum transaction

847. There had been a previous transaction, referred to as the Spectrum transaction, which had many similar features to the Devonia transaction. The Spectrum transaction had been used by Mr. Berezovsky and Mr. Patarkatsishvili to generate documentation to meet the money-laundering enquiries of Western banks in relation to the receipt, outside Russia, by the two men of $140 million in relation to the sale of their interests in ORT to companies controlled by Mr. Abramovich. As already described, the true sale price was $150 million, but the price expressly recorded in the formal sale agreements was merely $10 million, the balance of $140 million being paid offshore, not merely because Mr. Berezovsky was by this time an exile, and had concerns about the Russian State freezing the proceeds, but also because he was concerned about whether he and Mr. Patarkatsishvili would get exchange control from the Russian Central Bank to export the funds from Russia. For this reason, Mr. Berezovsky and Mr. Patarkatsishvili wanted the amount paid in Russia for the ORT shares to be an absolute minimum. The structure of the transaction was a matter that was discussed at the Le Bourget meeting. It was apparently Mr. Andrei Gorodilov who suggested a proposal whereby Mr. Patarkatsishvili and Mr. Berezovsky would sell a call option to one of Mr. Abramovich's offshore companies to satisfy the foreign banks' money laundering requirements. Another simpler proposal was discussed, whereby Mr. Abramovich's companies would simply make a straight payment to offshore accounts designated by Mr. Berezovsky and Mr. Patarkatsishvili; the latter would make the necessary arrangements for what was euphemistically referred to at trial as "legalising" the funds (i.e. to represent them as deriving from a legitimate source so as to satisfy the legal money-laundering requirements of the ultimate recipient bank into which the monies were paid); and Mr. Abramovich would agree to pay all or some part of the costs and commission which Mr. Berezovsky and Mr. Patarkatsishvili would have to pay in order to "legalise" the funds. In the end, as I find, the latter, more simple, course was adopted so far as Mr. Abramovich was concerned. Mr. Abramovich was told that Mr. Berezovsky and Mr. Patarkatsishvili would have to pay 20% "commission" in order to "legalise" the $140 million which was going to be paid abroad; and Mr. Abramovich agreed to pay 10% of this sum, amounting to some $14 million. Therefore a total of $154 million was going to be paid abroad.

848. The sale of Mr. Berezovsky's and Mr. Patarkatsishvili's ORT stake was structured as follows: there were three contracts of sale; one between Mr. Berezovsky and Akmos Trade Limited Liability Company ("Akmos"), an Abramovich company, for 49.95% of ORT-KB (which itself owned 38% of ORT); a second between Mr. Patarkatsishvili and Akmos for 49.95% of ORT-KB; and a third between LogoVAZ and OOO Betas ("Betas") (another Abramovich company) for the remaining 11% of ORT. These contracts were dated 25 December 2000 but were executed by LogoVAZ on 28 December 2000 and by Mr. Berezovsky and Mr. Patarkatsishvili on 29 December 2000. The shares were registered in the names of Akmos and Betas at the Moscow Companies Registry on 29 December 2000. Betas paid LogoVAZ a nominal price for its holding, while the price recorded in the sale agreements with Mr. Berezovsky and Mr. Patarkatsishvili was $10 million ($5

million each). However, as described above, the true price was $150 million, and therefore the rationale for the receipt into a Western bank account of $140 million by Mr. Berezovsky and Mr. Patarkatsishvili required to be documented.

849. Of the total of $154 million to be paid abroad, $136.3 million was paid - at Mr. Fomichev's direction - into an account in the name of Spectrum General Trading Establishment ("Spectrum") between 8 and 25 January 2001. Mr. Andrei Gorodilov, who arranged for the payments to be made, knew nothing about this company. He simply acted on Mr. Fomichev's directions.

850. Although not known to Mr. Abramovich or his advisers at the time, Spectrum was in fact a company owned by the Sheikh. Mr. Stephen Curtis, the principal of Curtis & Co, was a solicitor with offices off Park Lane who specialised in the creation of complex corporate and trust structures to hold assets for "super-affluent" individuals, generally from Russia or the Middle East. Mr. Curtis had briefly assisted Mr. Berezovsky in the *Forbes* litigation in 1998. In late 2000, Mr. Berezovsky and Mr. Patarkatsishvili had apparently been re-introduced to him by Mr. Samuelson of Valmet. The Sheikh had become a client of Curtis & Co in late 1999/2000. Mr. Curtis died in a helicopter crash in March 2004.

851. Curtis & Co were retained by Mr. Berezovsky and Mr. Patarkatsishvili at some stage in late 2000 to assist with the receipt, and subsequent holding outside Russia, of the proceeds of the ORT sale. In December 2000, Curtis & Co put in hand the arrangements for the opening in the name of Mr. Berezovsky and Mr. Patarkatsishvili of accounts at Clydesdale. Curtis & Co were then instructed, probably by Mr. Fomichev, but otherwise by someone else on behalf of Messrs Berezovsky and Patarkatsishvili, to draft two documents:

i) a call option agreement between Spectrum and Messrs Berezovsky and Patarkatsishvili, granting a call option to Spectrum exercisable within 12 months to purchase their respective ORT-KB shares; the price for the grant of the option itself was $140 million payable within 14 days, and a further $10 million was payable on the actual exercise of the option; and

ii) a deed of assignment between Spectrum and Akmos, which purported to assign to Akmos the call option rights contained in the call option agreement entered into by Spectrum with Mr. Berezovsky and Mr. Patarkatsishvili; the amount of the consideration for such assignment being left a blank. Mr. James Jacobson gave evidence about this transaction. He was a solicitor working at Curtis & Co at the time[461]. Although Mr. Jacobson had suggested in his witness statement that the firm was acting for Spectrum, "with hindsight" he acknowledged in cross-examination that it was also acting for Mr. Berezovsky and Mr. Patarkatsishvili.

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461 He subsequently became a salaried partner in the summer of 2001; he effectively took over the running of the firm from late November 2002, when Mr. Curtis moved to Gibraltar. Following the closure of Curtis & Co on 30 September 2004, after the death of Mr. Curtis in a helicopter crash on 3 March 2004, he worked as a consultant solicitor for Streathers Solicitors LLP from 1 October 2004 until 31 March 2006. Thereafter he moved to Gibraltar where he currently works as a consultant to law firms and trust management companies, including one which provides services to Mr. Berezovsky.

852. Both documents were drafted by Curtis & Co in mid-January 2001, shortly after the first payments to Spectrum were made. Mr. Berezovsky and Mr. Patarkatsishvili executed the call option agreement sometime after 9 February 2001, when Mr. Curtis wrote to Mr. Ivlev, who was acting on behalf of Mr. Berezovsky and Mr. Patarkatsishvili in relation to the transaction, to remind him that it was necessary for their clients to execute the option agreement. Spectrum executed both the call option agreement and the deed of assignment on about 11 June 2001, when signed copies of both instruments were faxed to Curtis & Co's office. At some stage after this date and before August 2002, a signature was purportedly added to the deed of assignment on behalf of Akmos. As at June 2001, Curtis & Co only had a copy of the assignment agreement signed by the Sheikh. On 6 August 2002 a deed of assignment signed by the Sheikh and purportedly signed by Akmos was sent by Mr. Jacobson to Mr. Kay's office, Mr. Kay being at that time aide and advisor to Mr. Patarkatsishvili. Mr. Jacobson said in cross-examination that he had "no idea" how the signature came to be on the copy of the document which Curtis & Co had held since June 2001. He agreed that the document which he had sent to Mr. Kay had been in the files of Curtis & Co since June without Akmos' signature on it. Mr. Jacobson confirmed that there was no other documentary record in the Curtis & Co file of any other agreement as executed by the Sheikh, apart from the copy faxed on 11 June, nor any record of the firm itself having arranged for an Akmos signature to be appended to the assignment.

853. As submitted on behalf of Mr. Abramovich, I conclude that the Spectrum agreements were a sham. They were not seen by Mr. Abramovich at the time, nor by anybody acting on his behalf in relation to the ORT transaction, including, in particular, Mr. Gorodilov, Ms. Panchenko and Ms. Popenkova. Mr. Gorodilov and Ms. Panchenko gave evidence to the effect that the purported execution of the assignment on behalf of Akmos was a forgery, which I accept and which, in any event, was not challenged. The arrangements could never have been intended, or effective, to confer call options on Spectrum, because the ORT-KB shares had already been transferred to Akmos by 29 December 2000 and indeed it had been registered as an ORT-KB shareholder by that date. Therefore, by the time that the call option agreement was drafted, Mr. Berezovsky and Mr. Patarkatsishvili had no shares over which they could grant a call option, and Akmos was already the owner of the shares which were the subject of the deed of assignment. Mr. Curtis was well aware of the date of registration of the transfer, at any rate by 5 February 2001 when he was told about it by Mr. Ivlev. Further, the $140 million had been paid into Spectrum's account by Mr. Abramovich's companies by 25 January 2001, and by Spectrum to the Clydesdale accounts of Mr. Berezovsky and Mr. Patarkatsishvili on 13 February 2001, in each case before the call option agreement or assignment were executed by all parties. Mr. Curtis was likely to have been aware of the date of the payments into the Clydesdale accounts on about 13 February 2001, since Curtis & Co had access to the Clydesdale statements. Perhaps not surprisingly, there was no evidence of the option ever having been exercised or of the agreements having been used for any other purpose.

854. In Mr. Berezovsky's First Schedule, at page 212, it was conceded:

> "… that the Spectrum option agreement was not genuine. That is why no reliance is placed upon it."

855. In my judgment, the evidence clearly demonstrated that the Spectrum scheme had no purpose other than to generate documentation which purported to explain that the origin of the $140 million paid into Mr. Berezovsky's and Mr. Patarkatsishvili's Clydesdale accounts, was legitimate in terms of compliance with the bank's anti-money-laundering procedures. Thus the Spectrum documentation purported to show that money had been received from an "acceptable" person or source, so far as the bank's anti-money laundering requirements were concerned (i.e. the Sheikh), and represented payment by his company, Spectrum, of the price for the grant of a call option to Spectrum, under the terms of an English law option agreement, rather than the funds representing the sale price of shares in a Russian registered company, paid by an unknown vendor in circumstances where the bank would have had difficulty in checking whether, for example, Russian exchange control or other legal requirements had been complied with in relation to the sale of such shares.

856. According to Mr. Berezovsky, the Sheikh appears to have charged the same, or almost the same, 15% commission for his "assistance" in connection with the Spectrum transaction as he subsequently did in relation to the Devonia transaction. Mr. Curtis agreed at some point with the Sheikh that he would receive a personal commission of $600,000 related to the Sheikh's profit on the Spectrum transaction.

857. Mr. Berezovsky did not mention anything about Spectrum in his witness statements. In cross-examination he said that he could not remember anything about Spectrum, and did not remember its name, and that the various arrangements to use the Spectrum mechanism would have been decided upon by Mr. Patarkatsishvili and implemented by Mr. Fomichev. However I conclude, based on his evidence and:

i) his signature on the Clydesdale account opening form;

ii) his letter before action, (which referred to the option agreement and that "Our client understands that Spectrum in turn transferred the shareholdings to [Mr. Abramovich], or to [his] nominees"); and

iii) information which he was recorded as having supplied for the summary judgment hearing in a witness statement used on that occasion, that, even if he could not remember Spectrum's name, Mr. Berezovsky would have known at the time, at least in very general terms, of the role played by the Sheikh and Spectrum in laundering the proceeds of the ORT sale.

I was not impressed by his attempts to distance himself from any knowledge of, or participation in, these arrangements.

858. The reason why the evidence relating to the Spectrum transaction is relevant, and why I have summarised it notwithstanding Mr. Berezovsky's acceptance of the fact that the Spectrum option agreement was not a genuine agreement, is that the Spectrum transaction sheds light on the nature, function and purpose of the subsequent Devonia Agreement, which Mr. Berezovsky maintains was a genuine agreement evidencing the sale or surrender of his Sibneft interests to Mr. Abramovich. In a sense the Spectrum transaction served as a dress-rehearsal for the far more substantial Devonia transaction.

Mr. Berezovsky's asserted purpose for entering into the Devonia Agreement

859. As I have already described, it was Mr. Berezovsky's evidence that it was very important for him and Mr. Patarkatsishvili that the agreement which they had reached for the disposal of their interests be in writing, and that it should record the interest in Sibneft which they were giving up. Various reasons were put forward for their concern.

860. First, Mr. Berezovsky alleged that they wanted to be sure that Mr. Abramovich would not find a way to avoid making payment. I do not accept this asserted purpose. The Devonia Agreement did not purport to be made with Mr. Abramovich, and Mr. Berezovsky and Mr. Patarkatsishvili would not have been able to have ensured Mr. Abramovich's compliance with his outstanding instalment obligations, simply by recourse to the Devonia Agreement.

861. Second, it was said that they wanted to ensure that the reason for the payments being made to them was clearly identified, so that there would not be any question that they were entitled to receive the sums, and to avoid any money laundering concerns. It was common ground between the parties that Mr. Berezovsky and Mr. Patarkatsishvili had a real need to document transactions in relation to their receipt of funds outside Russia, so that the anti- money-laundering requirements and procedures of Western banks could be satisfied and that that Mr. Abramovich knew of the importance to the two men of this requirement. To that extent, I accept that Mr. Berezovsky and Mr. Patarkatsishvili had a real need to produce documentation justifying their receipt of funds outside Russia, so as to ensure that they were in a position to comply with any anti-money-laundering requirements or procedures of Western banks; but I do not accept that Mr. Berezovsky and Mr. Patarkatsishvili had any wish that the genuine reason for such payments should be specified in the documents.

862. Third, Mr. Berezovsky asserted that he and Mr. Patarkatsishvili were determined to make sure that Mr. Abramovich would one day pay for his intimidation, although they knew that this would not be possible until Mr. Glushkov was safely out of Russia. I do not accept this asserted purpose as a reason for their entry into the Devonia Agreement. Given that Mr. Abramovich was not a party to the Devonia Agreement, and, as I find below, was not involved in the transaction, the Devonia Agreement did not provide them with an additional weapon to assist them in any future claim against him, based on intimidation. Mr. Berezovsky's case in this respect was tantamount to saying that he wanted to make sure that there was brought into existence an evidential record of:

i) beneficial interests held by him and Mr. Patarkatsishvili in a specific number of Sibneft shares under alleged oral trusts;

ii) the sale or disposition of such interests at this particular point in time; and

iii) an alleged on-sale to Mr. Abramovich.

I deal below with what I regard as the most likely explanation for the presence of these matters in the Devonia Agreement.

Analysis of the evidence relating to the making of the Devonia Agreement

863. In about April 2001, Curtis & Co appear to have received instructions to handle a transaction similar to Spectrum, but this time said to involve the proceeds of a sale of Sibneft shares. According to Mr. Berezovsky, he thought that the Devonia structure had been originally proposed by Mr. Curtis in order to protect Mr. Berezovsky's assets from the Russian authorities. On 20 April 2001, Mr. Curtis gave a dinner at Mosimann's dining club in Belgravia which was attended by (among others) the Sheikh, the director of the Sheikh's Private Management Office, Dr. Eyhab Jumean ("Dr. Jumean"), and three representatives of Clydesdale, its Chairman, the Chief Executive and the Head of Compliance. Mr. Curtis's attendance note shows that the potential involvement of the Sheikh and Clydesdale had been discussed at the dinner, and probably before.

864. On 10 May 2001, Mr. Abramovich met Mr. Patarkatsishvili at Munich airport, when, as I have already described, the question of a substantial payment to Mr. Berezovsky and Mr. Patarkatsishvili was discussed. On Mr. Abramovich's evidence, the topic had first been raised at the meetings in Courchevel and then Mégève in early 2001.

865. At about this time, Ms. Khudyk, one of Mr. Abramovich's accounts staff, who reported directly to Ms. Panchenko, with Mr. Shvidler being her ultimate supervisor, became involved. She was asked by Ms. Panchenko to liaise with Mr. Fomichev, who was identified to her as Mr. Berezovsky's representative, in relation to the administrative steps and documentation required to set up the arrangements for a payment of approximately $1 billion, subject to the supervision of Ms. Panchenko. Various options for doing so were considered, which were reflected in a document created by Ms. Khudyk called "Payment Schemes". At some point in May 2001, Ms. Panchenko suggested that the Latvian Trade Bank ("LTB") should be used to receive the funds on Mr. Berezovsky's and Mr. Patarkatsishvili's behalf, as it was a bank used by a number of Mr. Abramovich's companies and they had a good relationship with it. Ms. Khudyk was thus also instructed to assist Mr. Fomichev to open an account with LTB. One proposal, put forward by Mr. Fomichev to Ms. Khudyk, was that the transfer of the agreed sum to Mr. Berezovsky and/or Mr. Patarkatsishvili should be effected by means of a transfer of securities to the two men; the proposal was that one of Mr. Abramovich's companies would declare advance distribution of profit to an entity, or entities, specified by Mr. Fomichev; at the same time the entity/entities specified by Mr. Fomichev would instruct Mr. Abramovich's company to pay the dividends in the form of securities specified by Mr. Fomichev, which Mr. Abramovich's company would then acquire in the market through its broker and take them to a custodian where the entity/entities specified by Mr. Fomichev had accounts. Ms. Khudyk described how during a certain period it was unclear which of the two possible options (securities or cash) was going to be utilised to make the payment and therefore the two options were developed concurrently, although it appeared that the dividend mechanism was going to be utilised in any event, irrespective of whether the dividend was paid in cash or in specie (i.e. by transfer of securities).

866. On 14 May 2001, Mr. Curtis and Mr. Jacobson telephoned Clydesdale's European compliance officer, Ms. Hilton, in order, according to Mr. Jacobson's attendance note of the conversation, to provide "some information relating to the proposed transaction concerning the sale of shares in Sibneft". As recorded in the note, Mr. Curtis said that

Sibneft was owned 50% by Mr. Abramovich and 50% by Mr. Berezovsky and Mr. Patarkatsishvili jointly, but that, notwithstanding, the company's shares were registered 100% in the name of Mr. Abramovich. He said that Mr. Abramovich and the Sheikh were "rival bidders" for the 50% owned by Mr. Berezovsky and Mr. Patarkatsishvili. The note recorded:

> "… even though the Sheikh may initially purchase the shares, it was understood that he would be more than happy to pass on the shares to Mr. Abramovich while keeping a small stake for himself. In addition, in order for Mr. Abramovich to do the deal, it is obviously a pre-requisite that he was happy with the commercial element and negotiations were continuing in this regard."

The note went on to record that, if Mr. Abramovich bought the shares, he would be paying from funds in Latvia; if it was the Sheikh, the funds would be coming from Abu Dhabi. Ms. Hilton, however, was unwilling to accept payments from Latvia because EU money-laundering regulations did not apply there. But she was willing to accept them from the Sheikh, since the bank had done due diligence on him already and he was known to be a member of one of the richest families in the world. The note recorded Mr. Curtis as saying that:

> "… the new deal would be more along the lines of the Option scenario previously used in the ORT deal … as in the previous deal the Sheikh would ultimately sell on the shares to [Mr. Abramovich] under this Option scheme."

867. Ms Hilton was recorded as acknowledging this but as saying that "… the bank were only required to look at transactions which were passing through their bank accounts only"; i.e. the bank would not be required to examine any on-sale to Mr. Abramovich. She also commented that if the transaction went the same way as the previous one (i.e. the Spectrum transaction) then there would be less work to do for the bank. Mr. Curtis went on to inform her that there would be an initial transfer of $700 million, followed by the balance of $800 million being paid over the next year. Mr. Curtis and Ms. Hilton then went on to discuss a topic which was clearly intended to be the "sweetener" for the bank, namely the Sheikh's conversation at the dinner, where he had intimated that he wished to establish a banking connection with Clydesdale.

868. I comment that there was nothing in the evidence at trial to suggest that any of the information being conveyed by Mr. Curtis in this conversation had come from Mr. Abramovich or his employees, or that Mr. Curtis had been in communication with any of them (and Mr. Jacobson confirmed this) for the purposes of the transaction (other than the limited communication with Ms. Khudyk which I describe below); nor was there any anything in such evidence to support his assertions that Mr. Abramovich and the Sheikh were "rival bidders" in the proposed purchase of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged beneficial interests, or that there was any intention of Mr. Abramovich subsequently purchasing such interests from the Sheikh. Likewise Mr. Curtis' description of the Spectrum transaction as a deal in which the Sheikh had ultimately sold on the shares to Mr. Abramovich under an option scheme was also clearly incorrect. As Mr. Jacobson acknowledged, there was

no evidence in the Curtis files to support the proposition that either Akmos, Mr. Abramovich or any of his companies had ever exercised the call option over the ORT-KB shares, purportedly assigned by Spectrum, or had by that method purchased the shares from the Sheikh.

869. On 15 May 2001 Mr. Abramovich may have met Mr. Patarkatsishvili in Paris. In her oral evidence, Ms. Khudyk said that she was told about the $1.3 billion figure after 14 May 2001 which might suggest that the figure was agreed in Paris. It does not make any difference whether the final figure was agreed in Munich or Paris.

870. Two days later, on 17 May 2001, Mr. Curtis visited Mr. Patarkatsishvili's villa at Cap d'Antibes to take instructions from his clients, Mr. Berezovsky and Mr. Patarkatsishvili. Mr. Fomichev was also present. Mr. Jacobson faxed to the meeting a preliminary discussion draft of a share sale and purchase agreement between Mr. Berezovsky and Mr. Patarkatsishvili on the one hand and Mr. Abramovich on the other hand. There appeared to be various long form and short form drafts in contemplation. Mr. Curtis appears to have advised that there should be a direct agreement between Mr. Abramovich and Messrs Berezovsky and Patarkatsishvili so as to:

i) enable payment to be enforced in the English courts if necessary (there was an English jurisdiction clause in the draft);

ii) "try and create evidence" of the trust "scenario" which was said to be "currently in oral form";

iii) provide for a release of Mr. Abramovich's obligations as "trustee" of Mr. Berezovsky's and Mr. Patarkatsishvili's stake upon the money being paid.

They discussed a proposal under which Mr. Abramovich would agree in writing to buy Mr. Berezovsky's and Mr. Patarkatsishvili's "interest" in Sibneft, thereby acknowledging its existence, while the money would be channelled to Clydesdale via the Sheikh so as to satisfy the bank. In addition to the draft form of sale agreement, a draft form of release under which Mr. Berezovsky and Mr. Patarkatsishvili released any claim which they might have against Mr. Abramovich in relation to the shares, once they had been paid the sums due to them for transferring their beneficial interest in the shares, was also considered.

871. The decision was taken that the direct agreement should be in the shorter version, and Mr. Jacobson, who was tasked with the drafting, was instructed by notes from Mr. Curtis that the clients "… want new short form with confirmation of trust arrangements please" and that it was important to "particularly ensure that the trust clause is inserted". A draft of a direct agreement was faxed to Mr. Fomichev on 19 May 2001. This referred to Mr. Berezovsky and Mr. Patarkatsishvili (confusingly defined as "the Transferees") as the beneficial owners of approximately 44% of the issued and allotted share capital of Sibneft (defined as "the Shares") and contained confirmation by Mr. Abramovich that "at the Transferees' request" he had procured that "the registered holders of the Shares were legal entities directly or indirectly wholly owned and/or controlled by him"; and that he held the shares and/or controlled the registered holders "and through them the Shares as nominee in trust for and on behalf of the Transferees absolutely". The draft form of release was

"abandoned" on 18 May 2001, the day after it had been drafted. Mr. Jacobson could not assist in his oral evidence as to why the release was abandoned. The clear inference which I draw is that the release, like the proposal to have a direct sale agreement as between Mr. Berezovsky and Mr. Patarkatsishvili, and Mr. Abramovich of their alleged beneficial interests, was abandoned because Mr. Berezovsky and Mr. Patarkatsishvili knew well that Mr. Abramovich would not have been prepared, even in order to assist them with their money-laundering objectives, to have signed an agreement purporting to purchase interests which they did not own.

872. The contemporaneous Curtis & Co draft documentation and Mr. Jacobson's evidence also showed that at one stage, Mr. Curtis and Mr. Fomichev were apparently also envisaging that, in addition to these agreements between Mr. Abramovich and Mr. Berezovsky and Mr. Patarkatsishvili, there would be a parallel set of documents recording certain arrangements between Mr. Abramovich and the Sheikh. These would be designed to explain to the Russian authorities why such a large payment was being made by Mr. Abramovich to the Sheikh. The idea appears to have been that the Sheikh would grant Sibneft an oil concession on land known to have no oil under it, to which the payment could be related. To this end, Curtis & Co drafted two licence agreements each recording the grant of an oil concession to Sibneft for $550 million. These documents were discussed by Curtis & Co with Dr. Jumean of the Sheikh's Private Management Office, and e-mailed by Curtis & Co to Mr. Fomichev on 20 May 2001. In fact the proposal was abandoned shortly thereafter; as Mr. Jacobson observed in his witness statement, the suggestion that the Sheikh should grant an oil licence for land with no oil would have raised some eyebrows. There was no evidence that they were ever discussed with anyone on Mr. Abramovich's side, which clearly they would have had to have been, if Sibneft was to be granted an "oil concession".

873. The various contemporaneous drafts and notes, and Mr. Curtis's description of the proposed transactions, as well as Mr. Jacobson's evidence, demonstrated the sham and wholly bogus nature of the proposed arrangements. A solicitor, Mr. Nicholas Keeling[462] of Denton Wilde Sapte, Gibraltar, was retained to set up any offshore vehicles that might be required. In a telephone conversation on 21 May 2001 with Mr. Curtis and Mr. Jacobson, Mr. Curtis explained to Mr. Keeling the nature of the transaction. Mr. Curtis told Mr. Keeling that it was proposed that Mr. Abramovich should buy the interests of Mr. Berezovsky and Mr. Patarkatsishvili for $1.3 billion, of which $500 million would be paid up front and the rest in eight monthly instalments of $100 million each. Mr. Keeling's note of the telephone conversation recorded that he was told:

> "[Mr. Curtis] has been brokering a deal whereby Abromovich [sic] will buy out the shares of Berezovsky and Badre [Mr. Patarkatsishvili]".

But the statement that Mr. Curtis had been "brokering a deal" was rubbish; Mr. Jacobson's evidence was that his understanding at the time was that Mr. Curtis was not in contact with Mr. Abramovich and that he, Mr. Jacobson, had not been told of any such contact by Mr. Curtis. He also confirmed that, apart from Ms. Khudyk,

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462 Mr. Keeling died in 2011 prior to the start of the trial.

there was no evidence in the Curtis & Co file of any contact between Mr. Abramovich or Mr. Abramovich's staff and Curtis & Co.

874. In Mr. Berezovsky's written closing submissions the suggestion was made that Mr. Abramovich's denial of Mr. Curtis's statement to Mr. Keeling - that he, Mr. Curtis, had been "brokering" the deal with Mr. Abramovich - should not be accepted. It was said:

> "in this regard, the disclosure by Mr. Abramovich, mid-trial, of Mr. Curtis's files of his dealings with Mr. Abramovich in the mid-1990s was of some significance."

875. The fact that the documents were disclosed "mid-trial" had no significance whatsoever; they were only supplied to Mr. Abramovich midtrial by Mr. Jacobson, Mr. Berezovsky's own witness, and were thereafter disclosed in their entirety. The documents did not provide any support for a suggested relationship between Mr. Abramovich and Mr. Curtis in 2001, such as to suggest that Mr. Curtis was "brokering" any deal between Mr. Abramovich and Mr. Berezovsky. The evidence showed that Mr. Abramovich had met Mr. Curtis once in 1994 and once again in 1995, and that he and Mr. Shvidler had had discussions with Mr. Curtis at that time about possible commercial transactions, and about the possibility of Mr. Curtis arranging a Gibraltar passport for Mr. Abramovich; but in fact Mr. Abramovich and Mr. Shvidler had not conducted any business with Mr. Curtis either then or thereafter at any relevant time. Mr. Rabinowitz suggested that an article in the Guardian newspaper on 1 December 2003 which referred to

> "talks, which took place in London, between Stephen Curtis, the British lawyer recently made managing director of Yukos's main shareholder, Menatep, and Mr. Abramovich. They are understood to have centred on calls for more Sibneft control of any combined group…."

showed that there had been direct negotiations between Mr. Curtis and Mr. Abramovich in relation to the Yukos-Sibneft merger attempt in 2003. But such talks as there may have been in relation to a merger that did not proceed, did not demonstrate any relationship as between Mr. Abramovich and Mr. Curtis in May/June 2001 from which it can be inferred that Mr. Abramovich knew or had been informed about the terms of the Devonia Agreement.

876. I accept Mr. Abramovich's evidence in this respect. Mr. Curtis' statement was untrue; he was not brokering any deal between Mr. Abramovich and Mr. Berezovsky; in making the statement to Mr. Keeling, Mr. Curtis was no doubt trying to persuade Mr. Keeling of the genuine commercial nature of the arrangements underlining the proposed Devonia transaction and perhaps also trying to talk up his own role.

877. In the telephone conversation on 21 May 2001, recorded in Mr. Keeling's note, Mr. Curtis went on to say that he was drafting agreements between them which would record Mr. Abramovich's "trusteeship" of the interest of Messrs Berezovsky and Patarkatsishvili, of which there was otherwise no written record. However, according to Mr. Curtis, a parallel set of documents would be required in order to enable the funds to be "extracted" from Russia without identifying Mr. Abramovich as the

vendor, since Mr. Abramovich had always denied in public that Mr. Berezovsky and Mr. Patarkatsishvili had any interest in Sibneft, information which Mr. Jacobson thought had come from Mr. Fomichev. Mr. Keeling's note recorded:

> "The plan therefore is that His Highness Sheikh Sultan bin Khalifa Al Nahyan of Abu Dhabi (the head of the Crown Prince's office in Abu Dhabi) will arrange for an oil concession to be granted to Sibneft over a large tract of land in Abu Dhabi. It is anticipated that, in fact, this land will not actually have any oil. That will enable Sibneft to make a payment to Sheikh Sultan and Sheikh Sultan will then pay Berezovsky and Badre. There will be formal agreements reflecting this 'reality', although in fact this is merely a structure to enable the funds for Berezovsky and Badre's interests to be extricated from Russia. It is likely that Sheikh Sultan will in turn, as part of the structure, acquire a 10% interest in Sibneft."

878. Mr. Keeling was accordingly asked to advise on the establishment of two Gibraltar trusts, the Itchen Trust for Mr. Berezovsky and the Test Trust for Mr. Patarkatsishvili, and to open accounts on their behalf with Clydesdale to receive the funds. A BVI shelf company, to be owned by the Sheikh (in the event, Devonia) was to be obtained in order to receive the payments from Mr. Abramovich and pass them on to the Clydesdale accounts. Mr. Curtis's description of the proposed transaction clearly demonstrated that he was planning a sham transaction which was designed to provide a misleading explanation of the origin of the payments expected to be made by Mr. Abramovich. Mr. Jacobson agreed in cross-examination that this proposal was obviously a sham, "pretty much" designed to generate documents to explain the payments. However, Mr. Jacobson did in fact draft two licence agreements which he sent to Mr. Fomichev on 20 May 2001. Mr. Jacobson later rang Mr. Keeling back to ask him to reserve a BVI company Devonia Investments Ltd, whose registered and beneficial owner was to be the Sheikh. It was intended that Devonia would be the recipient of the payment to be made by Mr. Abramovich (whether in cash or by means of a transfer of securities.) On or about 22 May 2001, the Sheikh became the owner of Devonia's share capital and one of his employees, Matar Mohamed Saeed Ali Al Neyadi, was appointed as its sole director.

879. It also appeared from Mr. Keeling's attendance note of 21 May 2001 that the figure of $1.3 billion must have been agreed between Mr. Abramovich and Mr. Patarkatsishvili at the Munich or Paris meetings in May 2001 and communicated by Mr. Patarkatsishvili to Mr. Curtis. But, as I have already described, until the end of May 2001, no final agreement was reached between Mr. Abramovich and Messrs Berezovsky and Patarkatsishvili about the manner in which the $1.3 billion would be paid.

880. Mr. Fomichev had given Ms. Khudyk the details of Mr. Jacobson as the contact person to whom she should send documents; and, at some time towards the end of May, she was told by Ms. Panchenko that Ms. Panchenko had been informed by Mr. Fomichev that the particular company which was going to be the recipient of the payment would be Devonia. On 23 May 2001 Ms. Khudyk faxed Mr. Jacobson what

she referred to as draft board minutes of a meeting of the board of directors[463] of the Abramovich controlled company (eventually a Panamanian company, Pex Trade Corporation SA ("Pex")), which included a resolution for the declaration and distribution of dividends which were going to be paid to the Berezovsky/Patarkatsishvili vehicle. Ms. Khudyk believed that she sent the minutes at the request of Mr. Fomichev. This was confirmed by Mr. Jacobson who could not remember any conversation with her and assumed that she had obtained his details from Mr. Fomichev. On the same day, Clydesdale sent account opening forms for the Itchen and Test trusts to Mr. Jacobson. Curtis & Co. also sought advice from counsel, Mr. Jonathan Fisher, on money laundering issues relating to previous transactions with which they had been involved (including the Spectrum transaction) and sent instructions to him.

881. On 25 May 2001, Mr. Jacobson sent Mr. Keeling the account opening forms for the accounts of the Test and Itchen Trusts with Clydesdale. On the same day Ms. Khudyk sent to Mr. Jacobson a list of the documents required by the Latvian Trade Bank to open a safe custody account for Devonia.

882. On 29 May 2001, Mr. Curtis had a conference call with Mr. Fisher. The attendance note records:

> "SLC then raised the new Sibneft share deal and confirmed that BB/AP beneficially owned 50% of the shares in Sibneft. He said however that the shares were registered 100% in the name of RA. Effectively BB/AP had approached Sheikh Sultan to buy BB/AP's interest in the shares. SLC had set up a meeting with Sheikh Sultan and Clydesdale Bank as he wanted Clydesdale Bank to discuss the transaction. The effect of the agreement would be that Sheikh Sultan would purchase BB/AP interest at a discount and then sell on the shares to RA while retaining a minor interest. The reason behind the Sheikh being involved with the transaction was quite obviously his interest in the oil business and it would also benefit him to have a stake in that particular Russian oil company as he was expanding his oil business assets worldwide. He would also make a substantial profit on the transaction.
>
> "SLC said therefore the agreement at the moment would be that the Sheikh would pay BB/AP between US$500 million and US$1.5 billion for the shares and in response BB/AP would release their beneficial interest in those shares. The Sheikh would then pass on the beneficial interest to a third party (and it is likely this would be companies controlled by RA) but would retain a small interest and would also take a profit on the resale. It was also agreed that the Sheikh would provide his own cash to pay for the shares. SLC expected to receive a substantial amount of money in relation to this transaction as it related to the original introduction. As he was not involved on the sale on to RA, he would have no way of calculating the fee but was

[463] Confusingly the heading of the draft is "Extraordinary General Meeting of… ("the Company")

> happy for the Sheikh to designate a figure. RA was expected to use profits from one of his aluminium operations in Russia to pay for the shares. SLC confirmed that RA was in control of 90% of the Russian aluminium industry. SLC explained that the reason why it had been structured this way was that RA was the 100% registered owner and had made representations in Russia that he was the beneficial owner. Therefore, it was difficult to justify any payment by RA for purchasing these shares. RA was also not prepared to acknowledge the trust arrangement."

883. At this stage Mr. Fomichev was still pressing for payment in a form which would avoid the money-laundering enquiries of Clydesdale when the money was remitted from Latvia to London. He wanted discharge of Mr. Abramovich's payment obligation of $1.3 billion to be made by means of transfers of securities of equivalent value to a custody account with a depositary bank in Abu Dhabi. This would have enabled Mr. Fomichev to have transferred the securities in specie to the West or to describe any cash receipt as representing the proceeds of their sale. Ms. Panchenko was resisting the idea of payment in securities on the ground of impracticality.

884. On 29 May 2001, Mr. Abramovich met Mr. Patarkatsishvili in Cologne. As I have already described, Mr. Fomichev and Ms. Panchenko were also present at the meeting and its purpose was to finalise the method and timing of the payment of the $1.3 billion. As Mr. Abramovich and Ms. Panchenko described, and I accept, it was agreed at the meeting that payment would be made in cash, not by means of a transfer of securities as Mr. Fomichev proposed; that $500 million would be paid within a month; and that the balance would be paid in instalments over a period of time. As Ms. Khudyk described, whereas the "basic idea" remained unchanged, namely that of an Abramovich controlled company (as mentioned above, Pex) declaring a dividend in the sum of $1.3 billion, it was the method of payment that remained under discussion until the meeting at Cologne. Mr. Abramovich gave evidence to the effect that Mr. Patarkatsishvili had requested his assistance with the production of documents necessary to enable Mr. Berezovsky and him to receive the money in London. In those circumstances I do not find it surprising that Ms. Khudyk was asked to assist Mr. Fomichev with the arrangements for the opening of an account with LTB and the receipt of the payment from Pex. Ms. Panchenko had suggested the opening of Devonia's bank account with LTB for convenience, i.e. to minimise the risk of money transfer problems.

885. In Mr. Berezovsky's written closing submissions the assertion is made that the contemporaneous documents suggest that the plan to structure the sale of Mr. Berezovsky's and Mr. Patarkatsishvili's Sibneft interests as a direct sale from Mr. Berezovsky and Mr. Patarkatsishvili to Mr. Abramovich "was rejected by (or on behalf of) Mr. Abramovich on some date between 21 and 25 May 2001". I reject that assertion. There was no evidence whatsoever to support the contention that any draft agreements relating to a proposed direct sale to Mr. Abramovich of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged beneficial interests in Sibneft shares, were ever sent or otherwise communicated to Mr. Abramovich or his staff, or that he or anyone on his side were ever asked to, or ever did, consider or negotiate such a proposal; likewise, there was no evidence to support the contention that Mr. Abramovich or one

of his staff rejected the plan originally proposed by Mr. Curtis that there should be a direct sale of such interests to him. Mr. Abramovich's own evidence, which I accept, was that there was neither a request for, nor rejection of, a direct sale. Mr. Jacobson, as I have already said, confirmed that there was no evidence of any contact between Mr. Abramovich's staff and Curtis & Co (other than the limited contact with Ms. Khudyk in respect of the payment arrangements and setting up the bank account for Devonia) and could not assist on when or why there had been a change in plan resulting in the proposal for a direct contract between Mr. Abramovich and Mr. Berezovsky and Mr. Patarkatsishvili being dropped and replaced by a proposal for a purported sale of such interests to Devonia. Mr. Berezovsky's evidence in his witness statement was to the effect that he knew from Mr. Patarkatsishvili that Mr. Abramovich was refusing to make payment directly to them because Mr. Abramovich was concerned that he should not be seen to be paying money to Mr. Berezovsky as this would be harmful to him; he suggested in effect that it was because of Mr. Abramovich's insistence that there should be no direct payment that it was necessary to effect payment via the Sheikh. In cross-examination, however, he said that he did not remember discussing any document and did not know whether there had ever been a request for a direct contract. I hold that no proposal was ever made to Mr. Abramovich, whether by Mr. Patarkatsishvili or anyone else, for a direct contract of sale between himself and the two men of the latter's alleged beneficial interest in Sibneft shares, and that there was no rejection on Mr. Abramovich's part of any such proposal. I conclude that the overwhelming likelihood is that, whatever Mr. Curtis's advice, Mr. Berezovsky and Mr. Patarkatsishvili appreciated that there was no way in which they would ever persuade Mr. Abramovich, even solely for the purpose of helping them with the "legalisation" of their receipt of funds, to sign up to an agreement reflecting the purported sale of non-existent ownership interests in Sibneft shares, which they must have known that at least he did not consider that they owned.

886. Whatever the reason for the change in Mr. Curtis's proposals, following the meeting at Cologne airport on 29 May there was a need to justify to Clydesdale the receipt in London of the $1.3 billion which was going to be paid by Mr. Abramovich to Devonia's account at LTB in Latvia. Mr. Curtis' revised proposal was that, instead of a direct contract with Mr. Abramovich, the documents would now record an agreement by which Mr. Berezovsky and Mr. Patarkatsishvili sold their alleged beneficial interests in Sibneft shares to Devonia, purportedly on the basis that Devonia would sell those interests on to Mr. Abramovich, with the Sheikh taking a turn on the transaction. The structure of the sale was to be an outright sale of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged interest in one thirteenth of their holding, and the grant of a series of twelve options, exercisable over a period of eight months, to purchase further thirteenths. Each of the thirteen tranches would be sold for $100 million.

887. The new arrangements were initially described to Clydesdale on the telephone on 25 May 2001, and then in two draft letters of Mr. Curtis dated 29 May 2001, one to Mr. Fomichev and Mr. Kay and the other to Dr. Jumean, Director of Finance and Administration for the Sheikh's Private Office. Mr. Curtis copied both drafts to Ms. Hilton at Clydesdale. The draft letter to Dr. Jumean set out the new proposal to sell the stake to the Sheikh, and described the stages in which payment would be made, starting with the initial payment of $500 million. Mr. Curtis explained in the

draft that Mr. Abramovich would not enter into a direct agreement with Mr. Berezovsky and Mr. Patarkatsishvili because he would not be willing to recognise that they had any interest in Sibneft. He referred to the "nebulous" character of the interest which in these circumstances the Sheikh would be buying, but observed that this was likely to be a "sticking point" for Mr. Abramovich. As Mr. Jacobson said in his oral evidence, the interest was nebulous because it was undocumented and unacknowledged. He confirmed that Mr. Curtis knew, probably (Mr. Jacobson guessed) from Mr. Fomichev, that at this time Mr. Abramovich would not acknowledge any interest.

888. Mr. Curtis said that the sale by Mr. Berezovsky and Mr. Patarkatsishvili would be matched by an on-sale by the Sheikh to Mr. Abramovich, but that he would not be instructed in relation to that. He also explained that the new arrangements meant that, owing to his pre-existing relationship with the Sheikh, his firm could no longer act for Mr. Berezovsky and Mr. Patarkatsishvili but would henceforth act only for the Sheikh. All of this was said to reflect "ongoing discussions" with Dr. Jumean. However no explanation was given as to why Mr. Curtis was not going to be instructed in relation to the on sale by the Sheikh to Mr. Abramovich.

889. The first draft of what became the Devonia Agreement between Devonia and Messrs Berezovsky and Patarkatsishvili was prepared on the following day, 30 May 2001. The bank responded to Mr. Curtis's oral and written report of the change of plan by expressing concern that the Sheikh appeared to be exposing himself to a remarkable risk. The bank was concerned that the Sheikh might simply be passing money received from Mr. Abramovich through to the trusts of Mr. Berezovsky and Mr. Patarkatsishvili, and the bank asked for assurances on this point. Apparently the bank was not prepared to receive Mr. Abramovich's funds. As Mr. Jacobson agreed in cross-examination, on its face, this was an extraordinary transaction in which the Sheikh was going to buy for $1.3 billion an undocumented equitable interest in a Russian oil company in circumstances in which the registered owner of the shares was not prepared to acknowledge the existence of the interest. Mr. Curtis wrote to them on 31 May 2001 assuring them that there was no intention simply to recycle Mr. Abramovich's funds; Mr. Abramovich would be depositing funds with the Abu Dhabi Commercial Bank in advance in order to secure the payment of the price which would become due from him if, and when, the Sheikh acquired Messrs Berezovsky's and Patarkatsishvili's interest in each successive tranche of shares and sold it on to Mr. Abramovich. But, he said, the Sheikh would not be drawing on these deposits to pay Mr. Berezovsky and Mr. Patarkatsishvili; he would be using his personal funds. He told Clydesdale that the Sheikh would be writing to them directly to confirm this, which the Sheikh duly did on 5 June 2001. However the evidence showed that not only did Mr. Abramovich never make any such deposits with the Abu Dhabi Commercial Bank, but also that Mr. Curtis had no basis upon which to give the assurance to the Clydesdale that Mr. Abramovich was going to do so; the Curtis & Co files and Mr. Jacobson's evidence confirmed that there was no communication with anyone on Mr. Abramovich's side that would justify any such assertion; nor was there even any confirmation from the Sheikh that such deposits were going to be, or had been, made.

890. Also on 30 May 2001 Mr. Jacobson sent the corporate documents for Devonia to a Dr. Paie in the Sheikh's office. Ms. Khudyk sent to Mr. Fomichev and Mr. Jacobson

copies of the documents required by the Latvian Trade Bank to open an account. Mr. Jacobson sent these on to Dr. Jumean by cover of a fax. Ms. Hilton sent to Mr. Curtis a mapping document to show Clydesdale's understanding of the transaction.

891. By a letter dated 30 May 2001, Devonia, acting by its director, Mr. Al Neyadi also provided LTB with standing instructions to transfer the full balance of its account with that bank to its account with the Abu Dhabi Commercial Bank, via Chase Manhattan Bank New York.

892. Mr. Curtis informed Ms. Hilton on the next day, 31 May 2001 that the Clydesdale's "mapping document" "perfectly" reflected the deal, save that Mr. Berezovsky and Mr. Patarkatsishvili would not be trustees of their own trusts. He also said:

> "While we are not acting for the Sheikh in connection with the sale of his interest to Mr. Abramovich, I am advised that Mr. Abramovich will be making separate deposits with Abu Dhabi Commercial Bank."

893. Around 31 May 2001, Mr. Jacobson produced a document entitled 'List of matters for Eyhab Jumean' as an aide-memoire of what was required to complete the agreement. This included the following:

> "His Highness to provide written confirmation directly to Clydesdale that all sums forwarded to the accounts of BB or AP or to their respective trust company accounts in relation to the purchase of the Sibneft shares are the sole property of an are beneficially owned by His Highness. In order to provide confirmation that he is using his own money in relation to the transaction, this could be done by way of obtaining separate receipts from Mr. Abramovich and ensuring that His Highness uses independent funds to purchase the shares."

894. None of the actions required any involvement from Mr. Abramovich, other than the suggestion that "separate receipts should be obtained" from Mr. Abramovich. Needless to say, no such receipts ever were provided.

895. On 31 May 2001 Ms. Khudyk prepared and sent to Mr. Jacobson a pack of documents which included:

i) a checklist of documents;

ii) the final version of the minutes of Pex Board meeting relating to the decision in relation to the distribution of dividends;

iii) a receipt purportedly dated 14 May 2001 to be given by Devonia acknowledging their receipt of the Pex shares; and

iv) a payment instruction form purportedly dated 22 May 2001 from Devonia to Pex for the payment of dividends payable to Devonia as a shareholder in Pex to the account of Devonia at LTB.

As Ms. Khudyk acknowledged, she backdated certain of these documents in order the provide the necessary evidence to LTB to support and justify the payment by Pex to Devonia, as a genuine payment of a dividend, the sum of $33.85 million on 31 May 2001, which is the date on which she had been instructed to commence payments to Mr. Berezovsky and Mr. Patarkatsishvili.

896. On the same date 31 May 2001, the first payment was made by Pex to Devonia's account with LTB in the sum of $33.85 million. In accordance with Devonia's standing order, the same amount was transferred out of its account with the LTB and remitted to Devonia's account with Abu Dhabi Commercial Bank.

897. On 1 June 2001, Mr. Curtis sent the letters that he had first drafted on 29 May 2001 to the Sheikh's office, and to Mr. Fomichev and Mr. Kay. Copies were supplied to Clydesdale. These were broadly similar to the original drafts, except that the initial payment was now said to be $100 million, not $500 million. The deal was described as an initial purchase of the interest of Mr. Berezovsky and Mr. Patarkatsishvili in one thirteenth of their purported beneficial interests in Sibneft shares for $100 million, with a grant of options to acquire the rest over a period of eight months for a further $1.2 billion. Mr. Curtis informed them that he could now only act for the Sheikh and was obliged to withdraw from acting on behalf of Mr. Berezovsky and Mr. Patarkatsishvili.

898. The same day a further payment of $38.75 million was made by Pex to Devonia's account with LTB. The same sum was also transferred out of that account later that day to Abu Dhabi Commercial Bank.

899. On 2 June 2001, Ms. Hilton again sent to Mr. Curtis a letter with Clydesdale's understanding of the transaction, including a 'mapping document'. She suggested that the 'initial transactions have been agreed by all parties to be $100 million per week for a total of five (5) weeks' with arrangements for the remainder to be determined at a later stage. She emphasised the need to check that the monies were to come from the Sheikh's personal funds.

900. On about 3 June 2001, Reid Minty were instructed to act for Mr. Berezovsky and Mr. Patarkatsishvili in place of Curtis & Co. But their role appears to have been very limited. In his affidavit referred to below, Mr. Fomichev later stated that their role was to advise Mr. Berezovsky and Mr. Patarkatsishvili, in their capacity as vendors, on the terms of the sale agreement, as prepared by Curtis & Co. Reid Minty accepted a reduced fee because, according to Ms. Minty's note of 5/6 June 2001, they "were really playing a very small part in the transaction". A file note of Reid Minty dated 3 June 2001 considered the money laundering implications of the proposed transaction. A letter of engagement was dated 4 June 2001. On 8 June 2001, Mr. Curtis wrote to Mr. Berezovsky to say that Curtis & Co. would charge him only for work up until the date of the firm's instruction by the Sheikh.

901. On 4 June 2001, Mr. Jacobson emailed the latest draft of the Devonia Agreement to Mr. Fomichev and to Mr. Moss and Ms. Minty at Reid Minty. Ms. Minty responded in an email querying why Mr. Berezovsky or Mr. Patarkatsishvili should be required to give any warranties. On the same date, a further payment of $50.488 million was made by Pex to Devonia's account with LTB. This was again transferred out of that account on the same day to Abu Dhabi Commercial Bank.

902. On 5 June 2001, Mr. Berezovsky and Mr. Patarkatsishvili executed the Devonia Agreement, just two days after Reid Minty's appointment. Mr. Berezovsky executed it at Nobu Restaurant in London, where he was having dinner, and Mr. Patarkatsishvili signed the agreement in Baden Baden. Both men were taken through it by Reid Minty before they signed off on the agreement.

903. Mr. Patarkatsishvili signed the agreement in Baden-Baden, where he was on holiday. In this context Mr. Berezovsky sought to rely on an attendance note made by Mr. Stephen Moss of Reid Minty on 5 June 2001 as being "strongly indicative that the Devonia Agreement was not a sham". Mr. Moss travelled with Mr. Kay to Baden-Baden in order to obtain Mr. Patarkatsishvili's signature to the Devonia Agreement. The attendance note records a discussion between Mr. Patarkatsishvili, Mr. Anisimov, who was also in Baden-Baden at the time (and who was inaccurately referred to in the note "as Mr. Patarkatsishvili's oldest friend and adviser"), and Mr. Kay in relation to the terms of the Devonia Agreement. The note also recorded a discussion about the absence of Mr. Abramovich from the agreement, as well as a discussion, referred to as "a line by line analysis", of the form of the warranties, and the structuring of the options and of the consideration. There does not appear from the note to have been a Russian translation of the Devonia Agreement available at the meeting; it appears that Mr. Kay translated the wording as the meeting progressed. During the course of the discussion, Mr. Moss rang Mr. Curtis in an attempt to alter certain of the warranties, which Mr. Curtis declined to do, and the warranties were duly given. The note also recorded Mr. Anisimov as having:

> "… posed a series of questions about hypothetical agreements to work as a partner with [Sheikh Sultan] in buying shares in Sibneft, and also on verbal call options given to [Mr. Abramovich] to sell at a price to be agreed."

904. Mr. Anisimov was indeed a very close friend of Mr. Patarkatsishvili's, but they had only met each other for the first time in the summer of 1999 and could hardly be described as Mr. Patarkatsishvili's "oldest friend". He was not Mr. Patarkatsishvili's "adviser". I make this comment merely to demonstrate that Mr. Moss's note, not surprisingly, given the circumstances, cannot be regarded as entirely accurate. Mr. Anisimov did not speak English. He was cross-examined about this note by Mr. Rabinowitz. As he said, and as I accept, he was certainly not Mr. Patarkatsishvili's adviser. In these two respects Mr. Moss' note was clearly inaccurate. Mr. Anisimov was on holiday in Baden-Baden at the time. He did not deny that was present at such meeting, although he had no recollection of it whatsoever. He said that even if he had participated in the conversation, he would not have been involved in any formal negotiations about such a matter, which was nothing to do with him. He did not speak English. He suggested that the meeting might well have taken place in a restaurant.

905. Mr. Rabinowitz submitted that, despite Mr. Anisimov's claimed lack of recollection, Mr. Moss's contemporaneous attendance note should be treated as accurate; no challenge had been made to the authenticity of the note, nor had any reason been advanced for why or how Mr. Moss would have been inaccurate in his recording of this meeting. He further submitted that the attendance note, recording a genuine debate in which Mr. Patarkatsishvili, Mr. Anisimov and Mr. Kay engaged concerning the drafting of the Devonia Agreement, supported the genuine nature of the Devonia

Agreement. In his oral closing submissions, he also suggested that the note provided a further example of a Russian businessman in fact believing that Mr. Patarkatsishvili and Mr. Berezovsky did have a stake in Sibneft in 2001.

906. In my judgment the note cannot be regarded as in any way supporting the alleged authenticity of the Devonia Agreement. The fact that Mr. Moss may have been keen to take Mr. Patarkatsishvili through its provisions and pointed out some of the potential consequences in relation to the giving of warranties, simply does not address the issue as to whether the transaction was genuine. Moreover, as the evidence showed, Mr. Moss and Reid Minty itself clearly had extremely limited knowledge about the transaction. Nor did the note, or the evidence given by Mr. Anisimov in cross-examination, support the proposition that Mr. Anisimov knew that Mr. Berezovsky had a stake in Sibneft in 2001, or the proposition that Mr. Berezovsky did in fact have such a stake. Mr. Anisimov said both in evidence and his witness statement that he did not know, and had never known, what arrangements Mr. Patarkatsishvili and Mr. Berezovsky had had regarding Sibneft. I accept that evidence. Even if Mr. Moss' note is taken as substantially correct (and he was not called as a witness), there is no reason why Mr. Anisimov should have bothered to concentrate on the detailed terms of the Devonia Agreement, apparently conveyed in translation by Mr. Kay, or should be taken to have concurred with the statements made in it.

907. On 5 June 2001, Mr. Curtis also wrote to the Sheikh enclosing the draft of the Devonia Agreement to the Sheikh for him to sign. The letter said:

> "Pursuant to various meetings with and instructions from Dr. Jumean, the enclosed Agreement has been drafted with minimal warranty protection and is virtually devoid of all the usual protections one would expect to see in document for this type of transaction. Notwithstanding this, I understand that you have sought various protections and comfort through other commercial arrangements with the parties which do not relate to matters which either this firm or Clydesdale bank are instructed upon."

908. The same day, Mr. Keeling sent copies of the trust deed dated 4 June 2001 to Mr. Jacobson in order to open the Clydesdale accounts for Mr. Berezovsky and Mr. Patarkatsishvili's trusts.

909. Also on 5 June 2001, Pex paid Devonia a further $31.649 million, which was again transferred out of Devonia's account with the LTB the same day. Further payments were made on each of 6, 7, 8, and 9 June 2001. The total amount paid by Pex to Devonia by the latter date exceeded $232 million.

910. On 11 June 2001, the Sheikh sent Curtis & Co. a signed copy of the signature page of the Devonia Agreement. He also sent a letter from him dated 5 June 2001 and prepared by Mr. Curtis to despatch to Clydesdale. In this letter, the Sheikh said:

> "I also confirm that the monies used to purchase subsequent tranches of shares (after the initial $100,000,000 purchase required above) will also be from my own funds and will not be

> the proceeds of the onward sale to Mr. Abramovich or his companies of the initial share holding purchased from BB and AP.
>
> Accordingly, I can confirm that my funds and those of Mr. Abramovich (or his companies) will not be intermingled."

911. On 12 June 2001, Devonia made a payment of $200 million to the Itchen and Test Trust accounts at Clydesdale. Mr. Jacobson said that "the parties proceeded on the basis that the agreement came into force on that date". This appears to have been Devonia's first payment to Messrs Berezovsky and Patarkatsishvili. It originated from the Abu Dhabi Commercial Bank, and therefore appears to have come from the account to which the amounts paid by Pex to Devonia had been transferred. Thus, by the time that the Sheikh signed the agreement on 11 June 2001, eight payments amounting to more than $232 million had already been made to Devonia's account at LTB.

912. Further payments (exceeding $144.8 million) were made by Pex to Devonia on 13, 14, 15, 18 and 19 June 2001. Each payment was again transferred out of Devonia's Latvian Trade Bank account the day it was received. A further payment of $100 million was made by Devonia on or around 20 June 2001 to the Clydesdale accounts.

913. On 2 July 2001, Ms. Minty wrote to Mr. Curtis asking for Reid Minty's fee and saying:

> "Since we have heard nothing further since the sale of the first tranche we assume that the parties are dealing with the paper formalities themselves."

914. The fact that she was writing to Mr. Curtis, as opposed to writing direct to her firm's so-called clients, Mr. Berezovsky and Mr. Patarkatsishvili, for her firm's fee, underlines the reality.

915. Further payments were made by Pex to Devonia on 20, 21, 22, 25, 26, 27, 28, 29 June 2001 and 3 July 2001. These payments exceeded $126 million. A total of over $500 million was therefore paid by Pex in the period of a few days over a month from 29 May 2001, as had been promised by Mr. Abramovich at the meeting at Cologne airport.

The true nature of the Devonia Agreement

916. I conclude on the evidence that the real object of the "sale" to Devonia was:

i) to generate apparently genuine contractual documents which would explain the source of the funds to Clydesdale for the purposes of its anti-money-laundering due diligence; but

ii) to do so without requiring any document to be executed by Mr. Abramovich stating that he held shares in Sibneft under trust arrangements for Mr. Berezovsky and Mr. Patarkatsishvili, since it was known that he would not be willing to do that.

917. My conclusion as to the extraordinary nature of the arrangements envisaged by the Devonia Agreement is supported by a number of features which can be discerned from an analysis of the various stages of the transaction, which underline its lack of any genuine commercial purpose.

918. I refer first to the otherwise curious, and unexplained, fact that Mr. Curtis was not going to be retained in relation to the on-sale. Mr. Jacobson was not able to assist the Court in cross-examination as to why Mr. Curtis did not want to act in relation to the on-sale. In re-examination, Mr. Jacobson was shown a fax from Mr. Curtis to Mr. Keeling dated 26 September 2001 in which Mr. Curtis said:

> "… as I indicated to you previously, Sheikh Sultan will be making an onward sale of the majority of the shares that he is acquiring pursuant to this transaction. We have declined to be involved in this transaction as we are not in a position to control it or to check on the background of the transaction. We have received confirmation from the sheikh that he is separately advised on all of these matters."

919. But, given that Curtis & Co were acting for the Sheikh in any event in relation to the Sheikh's alleged purchase from Mr. Berezovsky and Mr. Patarkatsishvili, this explanation was incomprehensible. I infer that the reason why Mr. Curtis expressly stated that he would not be retained in relation to the on-sale, was to ensure that he would not be put in a position where he was expected to answer any questions which Clydesdale might have raised about the on-sale, save in very general terms.

920. Second, under the transaction the Sheikh was apparently proposing to purchase an undocumented equitable interest in a substantial part of the shares of a Russian company, in circumstances where the holder of the legal interest was said to be unwilling to acknowledge that the equitable interest existed. That exposed the Sheikh to substantial risk given that he was apparently acquiring, in Mr. Curtis' words:

> "… a nebulous beneficial interest without any third party confirmations from Mr. Abramovich as to ownership."

Although Mr. Curtis went through the motions of purporting to advise the Sheikh to take warranties of title from Mr. Berezovsky and Mr. Patarkatsishvili, these were wholly unsecured and could have provided no genuine comfort if, in reality, this had been a genuine purchase. That was particularly so in circumstances where the transaction envisaged that the Sheikh would sell on the alleged beneficial interests in the Sibneft shares to the very man who was denying their existence.

921. Third, whether the transaction was a genuine one, and accepted by Clydesdale as such, depended critically on whether there were indeed genuine arrangements between Devonia and Mr. Abramovich for the on-sale to Mr. Abramovich, and for the provision to the Sheikh of security in the form of advance deposits from Mr. Abramovich in with the Abu Dhabi Commercial Bank. But Mr. Curtis' statement that he was not being instructed in relation to the on-sale, effectively prevented Clydesdale from making any further enquiries. In fact, there was no on sale to Mr. Abramovich and no security advance deposits. I address this aspect in further detail below.

922. Fourth, the next surprising feature was that the scheme of successive call options, which was proposed for all but the first thirteenth tranche of Messrs Berezovsky's and Patarkatsishvili's alleged beneficial interests in Sibneft shares, did not provide any guarantee that they would actually get the full $1.3 billion. This was because they were only call options, which did not impose any obligation on Devonia to exercise them. Under the terms of the proposed Devonia Agreement, the only sum that Mr. Berezovsky and Mr. Patarkatsishvili were assured of receiving was $100 million for the first tranche of their alleged beneficial interests, which was unconditionally "sold" to Devonia. This would have been a serious risk for them if the Devonia Agreement had indeed been a genuine transaction.

923. Mr. Berezovsky's response to this was that

i) Mr. Berezovsky and Mr. Patarkatsishvili did not want to sell their interests in Sibneft, so they would have been perfectly content if Devonia had <u>not</u> exercised the options; and

ii) "… from Devonia's perspective, too, the options structure made sense: it permitted Devonia to limit its exposure to $100 million at a time, in case Mr. Abramovich stopped paying Devonia."

That explanation struck me as wholly unreal. On Mr. Berezovsky's own case, he had been intimidated into selling his alleged "interests" in Sibneft shares, because of threats about Mr. Glushkov and expropriation; one might have thought that, if that had been so, Mr. Berezovsky and Mr. Patarkatsishvili would have been extremely anxious that the sale of the entirety of their interests should be implemented as quickly as possible, and that they were paid the entirety of the price for their sale or surrender of such interests. Moreover one of Mr. Berezovsky's asserted reasons for wanting to document the transaction was to ensure that he got paid by Mr. Abramovich.

924. Fifth, another surprising feature of the arrangement, if indeed it had been a genuine one, was that, as in the case of the Spectrum transaction which was used to window-dress the ORT receipts, Mr. Curtis received a substantial personal "introduction" commission on the deal, in an amount of at least $13.8 million, in addition to his firm's professional fees of £481,068. The commission was agreed between Mr. Curtis and the Sheikh, but, although this was not clear from the evidence, it appears to have been paid by Mr. Berezovsky and Mr. Patarkatsishvili, since it came out of the funds received by Devonia from Mr. Abramovich. I find, despite the denial which he gave in evidence, that Mr. Berezovsky was aware of the commission and its payment; the documents show that he expressly consented to it. Mr. Curtis was recorded (by Mr. Keeling in an attendance note dated 5 December 2002) as making the point:

> "… that the fees due to him over which the US$13.8 million form part, are part of the fee of 0.66% of the 'turn' between the price at which Sheikh Sultan purchased the Sibneft beneficial interests Sibneft from [Messrs Berezovsky and Patarkatsishvili] and the price at which he has sold those beneficial interests to Abramovich. Originally the Sheikh was going to pay those fees but it had been agreed that it would be taken from BB's

> share (i.e. Itchen Trust) and credit would therefore be given for that amount in the context of the Sibneft shares (beneficial interests) transaction."[464]

925. In May 2003, Mr. Curtis also received an additional $4.5 million as a result of the transaction "for services rendered to Itchen Trust" (the Itchen Trust being the Berezovsky trust set up to receive the proceeds of the Devonia transaction). This sum was also paid to Mr. Curtis directly by Devonia, in effect at the expense of Mr. Berezovsky and Mr. Patarkatsishvili. Similar, but smaller, commissions were received by the other advisers and intermediaries involved: Dr. Jumean, Mr. Fomichev and Mr. Kay. The fact that a substantial "cut" was paid to Mr. Curtis, by Mr. Berezovsky, whether in addition to the Sheikh's approximate 15% "turn" on the deal of approximately $200,000,000, or carved out of the Sheikh's commission, strongly suggests that this was not a genuine transaction but rather a money-laundering scheme. On no basis could such a fee be justified as a legitimate professional fee for the legal services provided by Curtis & Co, either to Mr. Berezovsky and Mr. Patarkatsishvili or to the Sheikh. The overwhelming inference is that this fee was paid to Mr. Curtis for his role in enabling Mr. Berezovsky and Mr. Patarkatsishvili to receive the funds in the UK in a manner that appeared at least to be compliant with anti-money laundering requirements.

926. Mr. Berezovsky's attempted explanation that Mr. Curtis worked for the Sheikh, as opposed to for him and Mr. Patarkatsishvili, and that it was up to the Sheikh what commissions he chose to pay, was not convincing. Mr. Berezovsky clearly knew that Mr. Curtis had also acted for him and Mr. Patarkatsishvili in the transaction up until 1 June 2001.

927. It was submitted, in Mr. Berezovsky's written closing submissions that:

> "(1) … the fact that Mr. Berezovsky and Mr. Patarkatsishvili were persuaded to pay a large fee for Mr. Curtis's services says nothing about the genuineness or otherwise of the agreement.
>
> (2) Mr. Curtis also played a role which went beyond that of a transactional lawyer: he was able to assist Mr. Berezovsky and Mr. Patarkatsishvili in forming relationships with the Sheikh Sultan and with Clydesdale Bank. As noted above, he assisted in brokering the transaction with Mr. Abramovich.
>
> (3) Finally, Mr. Curtis was uniquely placed to advise on a transaction of this sort, given his historic dealings with Mr. Abramovich."

928. I reject those submissions as wholly out of touch with reality, both commercially and on the evidence. Not only was Mr. Curtis' fee in connection with the transaction

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[464] The credit being referred to appears to be a credit as between Mr. Berezovsky's trust on the one hand and Mr. Patarkatsishvili's on the other. The alternative is that it is a reference to the Sheikh being debited with the amount in the accounting as between him and Mr. Berezovsky and Mr. Patarkatsishvili. For the purposes of the point presently under consideration, it is irrelevant whether the Sheikh or Mr. Berezovsky/Mr. Patarkatsishvili actually paid Mr. Curtis's commission.

exceptionally large but it was also, as the evidence showed, subsequently disguised, probably for tax avoidance, if not evasion, reasons, as fees for services supposedly provided to various trusts and funds owned by Mr. Berezovsky. The quantum of the fee was a clear pointer to the true nature of the Devonia transaction. Moreover as I have already described, there was no evidence at all that Mr. Curtis "brokered" any deal with Mr. Abramovich, that he advised Mr. Abramovich in any way, or that he had had any meaningful "historic dealings" with him.

929. Sixth, if the Devonia Agreement had indeed been a genuine one might have expected that payments by Devonia to the accounts of the Itchen and Test trusts at Clydesdale would have borne some relation to the terms of the agreement, and in particular would have reflected the exercise of the successive options. But there was no such correlation. Again I address this issue below.

930. There was other evidence which demonstrated that the principal purpose of the transaction was to generate documents to satisfy Clydesdale's anti-money laundering requirements so that Mr. Berezovsky could receive the money paid by Mr. Abramovich in the UK. For example, a report dated April 2010 relating to Mr. Berezovsky's tax affairs, prepared by Pricewaterhouse Coopers, records at paragraph 15.9 in relation to the Devonia Agreement:

> "The agreement was documented in order to evidence the source of monies for subsequent bank and due diligence purposes. We are advised that, had it not been for these requirements, it is possible the agreement would have been an oral agreement not recorded in writing."

931. In an affidavit sworn in 2006 for the purposes of a Dutch investigation into alleged money-laundering by the MTM Group (previously known as the Valmet group), Mr. Fomichev gave the following reasons for structuring the deal as a sale to Devonia rather than to Mr. Abramovich:

> "The problems for the Vendors in selling their Beneficial Interests directly to Mr. Abramovich were:
>
> - As Mr. Abramovich's banking facilities were in Latvia (which at the time was a non EU member state), the Clydesdale bank would need to carry out source of funds checks on this money before it could be accepted by them. This was brought to Mr. Curtis's attention by the Clydesdale bank in May 2001;
>
> - There was a danger of political interference in the transaction with a significant risk of the Beneficial Interests being appropriated;
>
> - Mr. Abramovich had made representations in Russia that he was the sole owner of Sibneft and he was concerned that a direct sale could damage his credibility.

> To overcome these issues (in particular the Clydesdale banks [sic] due diligence requirements), Mr. Curtis introduced [the Sheikh] into the transaction."

Whilst I do not accept Mr. Fomichev's statements about Mr. Abramovich's position, it is clear that he too regarded the main driver for the Devonia Agreement as being to assuage Clydesdale's money-laundering concerns.

Mr. Berezovsky's evidence

932. It was clear from the evidence that Mr. Berezovsky knew that the reason for the interposition of Devonia and the Sheikh into the transaction was to enable Clydesdale to be satisfied that its anti-money laundering requirements had been complied with and thereby enable Mr. Berezovsky and his trusts to receive the $1.3 billion in the U.K. He knew that the deal to make a payment of $1.3 billion had been directly agreed as between Mr. Abramovich and Mr. Patarkatsishvili. He had alleged in his witness statement that one possibility which he and Mr. Patarkatsishvili had discussed "was a direct sale to Mr. Abramovich"; however there was no evidence that such a proposal was ever discussed with Mr. Abramovich; the reason put forward by Mr. Berezovsky for this was that Mr. Abramovich had told Mr. Patarkatsishvili that he "did not want his dealings with me to be too visible". Yet Mr. Berezovsky was not aware of any attempt by Mr. Patarkatsishvili to obtain a written document from Mr. Abramovich to that effect. Mr. Curtis consulted him and Mr. Patarkatsishvili personally about Mr. Curtis' original proposals for documenting the transaction on 17 May 2001. He admitted that the purpose of the Devonia structure was to protect his interests, and was well aware that it was designed to satisfy the bank. In an earlier witness statement used in connection with the summary judgment proceedings, Mr. Marino, Mr. Berezovsky's solicitor, had explained that the original plan to have a sale directly to Mr. Abramovich was unattractive to Clydesdale because of problems of identifying the source of funds coming from Latvia; but, unlike Mr. Berezovsky's evidence that Mr. Abramovich refused to engage in a direct transaction, and that was the reason for abandoning the direct sale, Mr. Marino said that the reason why there was no direct sale was because that would not have satisfied Clydesdale. Mr. Berezovsky also accepted in evidence that he knew that it "… would be done in the same way like ORT, through Sheikh Sultan". He signed the Devonia Agreement on 5 June 2001, having been taken through it in detail by Ms. Minty with the assistance of Mr. Fomichev. He was the beneficiary of the Itchen trust and the owner of Pennand Inc, to which the Devonia moneys were successively paid. He knew that he was paying the Sheikh a large commission. He specifically consented to $18.3 million in commissions being paid to Mr. Curtis out of the Devonia money. He knew that commissions were also being taken by Dr. Jumean, Mr. Fomichev and Mr. Kay. He also deliberately generated newspaper reports of his alleged "interest" in Sibneft, so that they could be provided to Clydesdale. Mr. Curtis wrote to Mr. Fomichev and Mr. Kay on 1 June 2001 specifically asking them to pass on the letter to Messrs. Berezovsky and Patarkatsishvili. The letter advised:

> "… you will appreciate that in order for the proceeds of this transaction to be remitted to the UK, it will be necessary to Clydesdale to be satisfied as to the sources of funds from the Sheikh … and, as to the underlying ownership of the assets involved. In this regard I have already explained to Lee Hilton

> the verbal trust arrangement that exists between [Mr. Berezovsky, Mr. Patarkatsishvili] and Mr. Abramovich and Mr. Abramovich's reluctance to reflect this trustee arrangement in writing given representations that he has made in Russia. Lee has been incredibly helpful in trying to find a way round this. It is possible that we will require additional comfort in this matter and I know that Ruslan is endeavouring to provide back up documentary evidence in the form of newspaper articles".

933. It was in response to this letter that Mr. Berezovsky generated the relevant newspaper articles to assert publicly (for the very first time) that he had a half share interest in Sibneft to which I have already referred. He gave an interview to *Kommersant*, the newspaper owned by him, and also to *The Moscow Times*. *The Moscow Times* article dated 28 June 2001 was found within the Clydesdale documents, with Mr. Curtis's initials on the copy. Mr. Berezovsky's response was "I don't [sic] responsible for coincidentals". But there was nothing coincidental about the timing of this press publicity. The information had been deliberately released to the Russian press directly in response to Mr. Curtis's request.

Mr. Abramovich's evidence

934. Mr. Abramovich's evidence was that he was not aware of the Devonia Agreement until these proceedings. Whilst he accepted in cross-examination that he would have known at the time that there would have to have been documentation to satisfy the banks, I do not accept that, for this reason, Mr. Abramovich "must have known" about the Devonia Agreement. There was no documentary evidence to support the proposition that Mr. Abramovich knew about the Devonia Agreement.

No on-sale

935. If the Devonia Agreement had indeed been part of a genuine transaction for the sale or surrender of Mr. Berezovsky's and Mr. Patarkatsishvili's beneficial interests in Sibneft shares to Mr. Abramovich, there would clearly have had to have been a "back-to-back" on-sale agreement by Devonia to Mr. Abramovich. Mr. Berezovsky's pleaded case in this respect was that:

> "Mr. Berezovsky's understanding is that the interests were then transferred [from Devonia] to Mr. Abramovich, or his entities, as envisaged by the recital [sc. Recital (G)], and that Mr. Abramovich paid the required amounts for them."[465]

In Mr. Berezovsky's evidence on the summary judgment application, this understanding was said to have been derived from discussions with Mr. Curtis, Mr. Patarkatsishvili and Mr. Fomichev.

936. But the reality was that there was no on-sale by the Sheikh to Mr. Abramovich and no provision of any "security deposit" in advance of such a sale. It was not even suggested to Mr. Abramovich in cross-examination that there had been any such on-

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[465] Re-re-re-Amended Particulars of Claim, paragraph C50.

sale. That allegation was clearly one which had to be specifically put to Mr. Abramovich if it was going to be made at all. Mr. Abramovich's evidence was that he was not aware of the Devonia Agreement at the time and never entered into any agreement with Devonia to purchase any beneficial interest in Sibneft shares. In his witness statement he said that[466]:

> "… I do recall being told later on, in around June 2002, that an Arab Sheikh was being used by Mr. Patarkatsishvili and Mr. Berezovsky possibly as an intermediary to legalise money. But as far as I was aware neither I (nor anyone on my team) had anything to do with that and I certainly saw no documentation involving any Sheikh. Nor was I aware of any 'on sale' of any 'beneficial interests' in Sibneft from any Sheikh or any other person. Any suggestion that there was a subsequent sale of interests from the Sheikh or Devonia to me is untrue. Prior to these proceedings, I had never seen any of the certificates of transfer of interests in Sibneft shares which appear to have been signed by Mr. Berezovsky and Mr. Patarkatsishvili."

937. Mr. Abramovich's evidence was supported by the absence of any record in the Curtis & Co files or of contemporaneous documentary evidence of such a transaction. Indeed there was no contemporaneous documentary evidence of any contact at all between Mr. Abramovich or his staff and the Sheikh's representatives, apart from the brief involvement of Ms. Khudyk in the setting up of the Devonia account at the Latvian Trade Bank in May 2001. Such limited contact as there was between Ms. Khudyk and Curtis & Co was limited to payment arrangements, including the setting up of the Devonian bank account.

938. In his written closing submissions, Mr. Berezovsky contended that the evidence supported the existence of a genuine on-sale. It was alleged that it was clear from certain internal Curtis & Co manuscript notes as between Mr. Curtis and Mr. Jacobson that Ms. Khudyk had, contrary to her evidence, had direct communications with Dr. Jumean. He further contended that,

> "… once it is established that the Devonia transaction was prepared with direct communications between Devonia's representative and Mr. Abramovich's representative, the genuine nature of the Devonia Agreement is confirmed."

939. The notes were made in manuscript on a fax dated 31 May 2001 from Ms. Khudyk to Mr. Jacobson. In the first note (made on the same day), Mr. Jacobson wrote to Mr. Curtis:

> "Told Natalia [Ms. Khudyk]/Ruslan [Mr. Fomichev] to send directly to Eyhab [Dr Jumean]. Also told Eyhab to expect documents. However Ruslan directed that docs should be sent here. Do not know what this relates to in respect of the whole transaction so have not done anything.."

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466 Abramovich 3rd witness statement, paragraph 290.

Mr. Curtis replied:

> "I have told Ehab we cannot act on this – he is to refer to his A.D. [Abu Dhabi] lawyers – he confirms that he has already received these direct from (Sibneft?) and is dealing with Sibneft / Natalia direct – do not send."

940. I regard these manuscript notes as a wholly tenuous basis upon which to ground an assertion that Ms. Khudyk, or anyone else on Mr. Abramovich's side was in contact with the Sheikh, so as to impute knowledge of the Devonia Agreement to Mr. Abramovich.

941. Ms. Khudyk knew that Mr. Jacobson was a lawyer and "related to the group which Mr. Fomichev represented", but did not know the extent to which he had knowledge of or was involved in the transaction. Thus, her evidence was that it was Mr. Fomichev who was her main contact with respect to the implementation of the payment mechanism, whereas Mr. Jacobson was simply the contact to whom she was to send documents. She was in contact with him for no more than two weeks in May 2001. The evidence relating to her involvement, simply in relation to the mechanics of the payment by Pex to Devonia and her assistance with the opening of Devonia's account with LTB, does not support Mr. Berezovsky's submission that Mr. Abramovich was involved in, knew about, or was in any way party to, or involved in, the Devonia transaction other than in making payments to the Devonia account.

942. In his oral evidence, Mr. Jacobson confirmed :

i) that the source of Mr. Curtis's information about Mr. Abramovich's unwillingness to acknowledge any interest of Mr. Berezovsky and Mr. Patarkatsishvili in Sibneft is likely to have been Mr. Fomichev;

ii) that Curtis & Co's files contained no record of any contact between the firm and: Mr. Abramovich; Mr. Berezovsky and Mr. Patarkatsishvili or their staff; or Dr. Jumean; concerning the supposed on-sale by Devonia to Mr. Abramovich;

iii) that, apart from the limited documentation to which I have already referred in respect of Ms. Khudyk, the Curtis & Co files contain no record of any communication between the firm and anyone on Mr. Abramovich's side;

iv) that Mr. Jacobson was aware of no steps that Mr. Curtis had taken to verify that there really was an on-sale or that Mr. Abramovich would be making advance deposits in respect of it; and

v) that it was Mr. Curtis who decided that he should not act on the suggested on-sale from Devonia to Mr. Abramovich.

943. Ms. Khudyk's evidence was that she had had no contact with Dr. Jumean, although in a much earlier witness statement she had said that, although she could not recall doing so, it was possible that she did speak to Dr. Jumean. But there is nothing either in the Curtis & Co notes or in any other contemporaneous documents that supports the

proposition that Ms. Khudyk had any substantive communication with Dr. Jumean. Even if (contrary to her evidence) Ms. Khudyk did have some e-mail or fax communication with Dr. Jumean, the probability is that, as the Curtis & Co manuscript notes suggest, she was in contact with representatives of Devonia, to which Mr. Abramovich (or rather Pex) was paying $1.3 billion, simply for the purposes of assisting with the mechanics for the opening of Devonia's account with LTB, or in connection with the payment to that account, and was sending documents for that purpose. She was clearly communicating with Mr. Fomichev in that respect, and it would not have been surprising if he had passed on the documents he had received from her to Dr. Jumean.

944. Even if she had had some communication with Dr. Jumean, there was no evidential basis to support the propositions either:

i) that she had any knowledge of the arrangements between Mr. Berezovsky and the Sheikh, or of the nature or content of the Devonia Agreement; or

ii) that she was involved in any arrangements in relation to any on-sale by the Sheikh to Mr. Abramovich.

945. Nor do I accept the allegation made on behalf of Mr. Berezovsky that the absence of any record of communications as between Dr. Jumean and Ms. Khudyk, or indeed as between Dr. Jumean and Mr. Abramovich, or any other member of his staff, is attributable to any failure in Mr. Abramovich's disclosure process. The evidence was that, by letter dated 25 August 2009 the Sheikh expressly authorised Mr. Jacobson to provide to Mr. Berezovsky copies of all documents owned by Devonia or the Sheikh concerning the alleged transaction, from the Curtis & Co files, subject to the condition that Dr. Jumean should have first reviewed them. Copies of the files were handed over and there was no evidence that Dr. Jumean had held any back. If there had been any communications between Ms. Khudyk and Dr. Jumean, it must be assumed that Mr. Berezovsky would have disclosed them. There was no document in such files that recorded exchanges or agreements between Devonia or the Sheikh and Mr. Abramovich's representatives, whether relating to the alleged on-sale or otherwise in connection with the Devonia transaction, save those limited communications with Ms. Khudyk to which I have already referred. The parties jointly wrote to the Sheikh on 21 April 2011 and 2 August 2011 requesting disclosure of documents which might exist to evidence an on-sale. They received no response, either from him or from Dr. Jumean.

946. As I have already mentioned above, by the time that the Sheikh signed the agreement on 11 June 2001, eight payments amounting to more than $232 million had already been made by Abramovich companies to Devonia's account at LTB. I conclude that they were made pursuant to the timetable agreed between Mr. Abramovich and Mr. Patarkatsishvili in Cologne on 29 May 2001, and had nothing to do with any alleged on-sale by the Sheikh.

947. Mr. Berezovsky did not call the Sheikh or Dr. Jumean or any other witness to support his case that there was an on-sale to Mr. Abramovich. Given the extraordinary features about the whole transaction which I have described, the evidential burden clearly lay on Mr. Berezovsky to establish that the transaction was a genuine one. In Mr. Berezovsky's written closing, reliance was placed on the fact that the parties

allegedly used complex written instructions to achieve payment, following a simple oral agreement. But that took the matter no further at all in terms of establishing that Mr. Abramovich was party to an alleged on-sale. The closing submissions also relied upon what was said to be "more reliable" than Ms. Khudyk's evidence, namely "the evidence of the Sheikh….. that there had indeed been commercial arrangements concluded to sell on the relevant interest." Reference was made to six letters written to or by the Sheikh or Dr. Jumean. Some of them I have already referred to in my exposition of the evidence relating to the Devonia transaction.

948. Of the six letters, only two purported to confirm that there had been an on-sale. The first of these was sent to Mr. Samuelson of MTM on 31 October 2006, apparently in connection with the Dutch money laundering investigations. It said:

> "I also confirm that all the payments made by me to the Test Trust account at Clydesdale Bank in London were from my funds as part of my purchase of Sibneft interests that I later sold to Roman Abramovich."

The second was sent by the Sheikh to Mr. Jacobson on 25 August 2009 in connection with this litigation. It said:

> "Devonia subsequently entered into commercial arrangements to sell on the whole of the Sibneft interests to entities controlled by Roman Abramovich."

949. In the absence of any evidence from the Sheikh or Dr. Jumean in this action, or any contemporaneous documentary support for the assertions, I cannot attach any weight to these statements. Moreover, as pointed out by Mr. Abramovich in his written closing submissions, both letters suggest that it was only after the Devonia Agreement was concluded that Devonia entered into the putative "on-sale" with Mr. Abramovich. Thus the assurance given to Clydesdale that the Sheikh would be secured by a prior deposit by Mr. Abramovich under the corresponding transaction with him, was not correct on any basis. The Sheikh purported to bind himself to at least the first tranche payment at a time when, by his own admission, there was no corresponding arrangement with Mr. Abramovich.

950. The other four letters relied upon by Mr. Berezovsky likewise provided no reliable evidential support to the allegation of on-sale. They referred to a proposed on-sale expected at some future point. Three were prepared at the time of the discussions with Clydesdale, with a view to addressing the Bank's money laundering enquiries. The fourth was written in February 2002, and was designed to create a document trail, at a time when it had become clear that there was no relation between the terms of the Devonia Agreement and its performance; a topic which I address below.

No relation between the terms of the Devonia Agreement and its performance

951. As I have already said, if the Devonia Agreement had been a genuine agreement, it might have been expected that the payments by Devonia to the accounts of the Itchen and Test Trusts at Clydesdale would have borne some relation to its terms, and in particular to the exercise of the successive options. In fact, there was no correlation. Thus:

i) The initial payments of $500 million agreed between Mr. Abramovich and Mr. Patarkatsishvili at Cologne were paid within the month agreed. The first payment by Devonia to the Itchen and Test Trust accounts at Clydesdale was a payment of $200 million made on 12 June 2001, i.e. twice the initial payment of $100 million which the Devonia Agreement required to be paid on completion. Seven payments (including the first one), amounting to $500 million in total, had been paid to the Itchen and Test Trust accounts at Clydesdale by 28 August 2001.

ii) All payments after the first one were to be made under the terms of the Devonia Agreement on the exercise of the successive options, but there was no documentary record of Devonia having exercised any of the options. Mr. Berezovsky and Mr. Patarkatsishvili appear to have signed all the necessary certificates of transfer in one go on 5 June 2001 at about the same time as they executed the agreement. Mr. Jacobson's evidence was that no evidence reached Curtis & Co of the exercise of any of the options. Instead, the practice was that after each payment, a corresponding certificate would be issued. Even this appears to have happened much later. No certificates of transfer were supplied to Devonia until October 2002 at the earliest, when the Sheikh's private office called for their delivery well after most of the money had been paid. It seems that they had not been provided by 27 March 2003, for by his letter of that date, Mr. Fomichev stated that "upon" receipt of the transfer certificates he would "pass all of the said certificates to either Mr. Abramovich or a company or nominee pursuant to his direction".

iii) On 1 August 2001, Mr. Curtis wrote to Clydesdale to explain the fact that money had been reaching their account in instalments which differed from those specified in the Devonia Agreement. He told them that all parties had agreed to vary the Devonia Agreement to provide for payment in multiples of $20 million, which was closer to the rhythm of the actual payments. There was no evidence that they had agreed any such thing, and no such agreement was ever formalised. Mr. Jacobson was unable to remember any such agreement and Mr. Berezovsky was unable to assist in any meaningful way in his evidence about this alleged agreement.

952. After August 2001, the schedule of payments was disrupted by the refusal of Clydesdale to accept further transfers from September 2001 to August 2002. Eighteen payments were made at irregular intervals thereafter by Devonia into other accounts connected with Mr. Berezovsky and Mr. Patarkatsishvili, namely those of Pennand Inc and Tiberius Ltd., companies that were used as conduits by Valmet/MTM in order to transfer funds on to other trusts of Mr. Berezovsky and Mr. Patarkatsishvili, respectively the Hotspur and Octopus settlements. But the payments to Pennand and Tiberius bore no relation to the $100 million tranches provided for by the Devonia Agreement. In February 2002, Mr. Curtis discovered from the administrators of Pennand and Tiberius that payments had been made at times other than those envisaged in the agreement and to accounts other than those provided for. The administrators of these companies were concerned because the Devonia Agreement no longer served as an explanation of the payments which they could rely upon as compliance with the money-laundering regulations. Mr. Curtis proposed to rectify the anomaly by preparing an amendment to the Devonia

Agreement, retrospectively modifying the parties' obligations so as to accord with what had actually happened. An Amending Agreement was ultimately executed on 25 December 2002. It was clear that its purpose was to create a document trail to satisfy the bank as to the sums of moneys which were actually being received.

953. Moreover, although the Sheikh had expressly assured Clydesdale that he would be making payments from his own funds, which would not be intermingled with any funds received from Mr. Abramovich, the timing of the payments indicated the contrary and that no separate funds of the Sheikh's were in fact utilised. As I have already described, the route used to transfer the funds, indicated that all that was happening was that the funds emanating from Mr. Abramovich's company, Pex, simply washed through two of Devonia's bank accounts before being paid to Mr. Berezovsky's and Mr. Patarkatsishvili's trusts. Thus, the payments from Pex were made following Mr. Fomichev's direction to Devonia's account with LTB. LTB had a standing instruction automatically to transfer the full balance on that account at the end of each day to an account of Devonia's, No 0244849577, with Abu Dhabi Commercial Bank. The payments to the Itchen and Test trust accounts with Clydesdale were made from a Devonia account with the Abu Dhabi Commercial Bank; one can infer that the payments were made from the same account since the documents identify no other. The payments subsequently made by Devonia to Pennand and Tiberius, and to the Rainbow Fund, ostensibly pursuant to the Devonia transaction, were sourced from the same Abu Dhabi account.

Reliance by Mr. Berezovsky on alleged due diligence by third parties

954. I should mention that it was submitted on behalf of Mr. Berezovsky that the fact that the professionals involved in the Devonia Agreement conducted "due diligence" into the transaction somehow supported the genuine nature of the transaction. For example reliance was placed on the fact that Mr. Curtis sought the advice of counsel in relation to potential money-laundering aspects of the transaction and that Clydesdale and Denton Wilde Sapte respectively conducted some sort of due diligence.

955. On my analysis, the evidence did not support the proposition that the taking of advice by Mr. Curtis demonstrated either his belief as to, or the actual, genuine nature of the transaction. Mr. Curtis in the circumstances was understandably concerned not to expose himself to the risks of breaching any money-laundering regulations. His description of the transaction to counsel was far from complete or accurate. I do not accept that Mr. Curtis believed that the transaction was a genuine one.

956. It is not necessary for me to analyse the quality or depth of the due diligence carried out by either Clydesdale or Denton Wilde Sapte. The evidence relating to the procedures which they implemented did nothing to persuade me that the Devonia transaction was of a genuine nature. Whether either Clydesdale or Mr. Keeling of Denton Wilde Sapte thought it was a genuine transaction are not issues which I need to determine.

Conclusion

957. Accordingly I find that the Devonia Agreement was not a genuine agreement. It was a sham agreement, entered into for the purposes of generating documentation that

would give a false impression that a genuine commercial transaction had been entered into, so as to satisfy the money-laundering requirements of Clydesdale, and so as to enable Mr. Berezovsky and Mr. Patarkatsishvili to receive the $1.3 billion in a "legalised" fashion in the UK. Second, Mr. Abramovich was not involved in, or party to, the Devonia Agreement and knew nothing about its terms. Such limited involvement as there was, at a low level, by members of his accounting staff in what might loosely be referred to as the Devonia Agreement transaction was directed at, and limited to, the mechanics for the payment by Abramovich controlled companies of the $1.3 billion to Devonia's account with LTB in Latvia - which had been agreed as between the Abramovich side and the Berezovsky side would be the account to which the funds would be remitted. Third, contrary to the terms of the Devonia Agreement, there was never any genuine intention that Devonia would "transfer the beneficial interests in the Shares being [purportedly] purchased" under the agreement to Mr. Abramovich or companies or entities controlled by, or associated with, him. Fourth, Devonia never did transfer such interests to Mr. Abramovich or any companies associated with him. Fifth, because it was a sham transaction, neither the recitals, nor the other terms, of the Devonia Agreement, supported Mr. Berezovsky's case in relation to the alleged 1995 and 1996 Agreements or in relation to the Sibneft intimidation issue. Sixth, on the contrary, the evidence relating to the issue, and the fact that he chose to assert that the Devonia Agreement was a genuine agreement, did not reflect well on Mr. Berezovsky's credibility.

958. If Mr. Berezovsky had not chosen to allege:

i) that the Devonia Agreement was a genuine one, which accurately recorded, at least in general terms, a sale of his and Mr. Patarkatsishvili's interests to Mr. Abramovich; and

ii) that there had been a genuine on -sale to the Sheikh,

it would not have been necessary for me to have considered the transaction in such detail. If Mr. Berezovsky had simply said that the Devonia Agreement was a device, which his professional advisers had advised him to enter into, in order to ensure that he and Mr. Patarkatsishvili could receive the sum of $1.3 billion in bank accounts in the UK, his credibility in relation to the main issues in the action would not, in all the circumstances, have been damaged by the fact that the transaction with the Sheikh was so obviously bogus. One could have regarded it simply as a dubious and expensive mechanism for routing the $1.3 billion to Mr. Berezovsky's and Mr. Patarkatsishvili's UK bank accounts. But it was Mr. Berezovsky's attempts to suggest that the Devonia Agreement was genuine, reflecting an actual sale to the Sheikh and an actual on-sale to Mr. Abramovich, and to implicate Mr. Abramovich in the transaction, that has had such serious implications for the rest of Mr. Berezovsky's case.

Section XIII- Issues A5 – A7: The remaining Sibneft issues

Introduction

959. The remaining Sibneft issues, as I have defined them are:

i) **Issue A5:** What law governs any liability in tort or delict arising out of the above matters?

ii) **Issue A6:** Has such liability arisen under that law?

iii) **Issue A7:** If so, is a claim in respect of that liability time-barred?

Issue A5: the governing law of the intimidation claim

960. Issue A5 addresses Issue 5 in the Agreed List of Issues. This was formulated as follows:

> "5. What is the governing law of the claim in intimidation? In particular
>
> (1) Where did the most significant element or elements of the events constituting the alleged tort take place, for the purposes of section 11(2)(c) of the Private International Law (Miscellaneous Provisions) Act 1995? Did they take place in (a) England; (b) France; or (c) Russia?
>
> (2) If the events constituting the alleged tort took place in France or England, is it nevertheless substantially more appropriate (within the meaning of section 12 of the 1995 Act) for the applicable law to be Russian law?"

961. Mr. Berezovsky's primary case on the pleadings was that the intimidation claim was governed by English law[467]. His secondary case was that it was governed by French law, which was agreed between the parties to be the same in all relevant respects as English law[468]. In the further alternative, Mr. Berezovsky relied on Russian law[469]. However, by the time of his closing submissions, his primary case was that the applicable law, pursuant to section 11(2)(c) of the Private International Law (Miscellaneous Provisions) Act 1995 ("the 1995 Act"), was France, as being "… the country in which the most significant element or elements of the events [constituting the tort] occurred". His alternative case was that English law governed the claim.

962. Mr. Abramovich's case was that the connection of the elements of the alleged tort with Russia and Russian law substantially outweighed any connection with England or France. It was submitted on his behalf that none of the elements of the tort occurred in England, except that Mr. Berezovsky signed the Devonia Agreement there (Mr. Patarkatsishvili signed it in Germany); the only connection with France was that Mr. Berezovsky happened to be there when Mr. Patarkatsishvili relayed the alleged threats to him over the telephone. In the alternative Mr. Abramovich submitted that, even if English or French law were held to be the proper law of the tort on the basis of the "general rule" contained in section 11(2)(c) of the 1995 Act, Russian law would

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467 Re-re-re-Amended Particulars of Claim, paragraph C54A.

468 Re-re-re-Amended Particulars of Claim, paragraphs C54B-C54C.

469 Re-re-re-Amended Particulars of Claim, paragraph C54D.

still apply by virtue of the "rule of displacement" contained in section 12 of the Act, because it was substantially more appropriate for the applicable law determining the relevant issues to be Russian law.

963. It followed that, for the purposes of determining the proper law of the alleged tort, the court would have had to resolve the following issues namely:

i) which of England, France or Russia was the country in which the most significant element or elements of the events constituting the tort of intimidation occurred; and

ii) if the answer to that issue were not Russia, but rather England or France, whether it was nevertheless substantially more appropriate for the applicable law of the tort of intimidation to be the law of Russia.

964. In the light of my determination of the previous issues A1, A3 and A4, any ruling on this issue would be necessarily be based upon wholly hypothetical factual assumptions: viz. that Mr. Berezovsky and Mr. Patarkatsishvili had contractual rights against Mr. Abramovich in the terms of the alleged 1995 and 1996 agreements; that Mr. Abramovich had indeed intimidated Mr. Berezovsky to dispose of such interests; and that the Devonia Agreement was a genuine transaction; or, possibly, on a combination of one or more of such assumptions. With some reluctance therefore, as the issue raises interesting, and undecided, points of law, I decline to engage with it, as necessarily it can have no impact on the outcome of my decision. But my provisional view is that Russian law would have been the applicable law governing the alleged tort or delict of intimidation, either by virtue of the application of section 11 or section 12 of the 1995 Act.

Issue A6: has liability arisen under that law?

965. It is clear from my determination of Issue A3 (the Sibneft intimidation issue) that no such liability had arisen under French, English or Russian law, given my finding of fact that Mr. Abramovich had not made the alleged threats. There is therefore no need for me to address the substantive and procedural issues of Russian law raised by Issue 11.1 of the Agreed List of Issues, namely:

> "11. If the applicable law is Russian law:
>
> (1) Did Mr. Abramovich's conduct fulfil the conditions for liability under Article 1064 of the Russian Civil Code?"

The short answer is that, on the basis of my findings of fact, Mr. Abramovich's conduct did not fulfil the conditions for such liability.

Issue A7: is any claim in respect of that liability time-barred

966. Issue A7 of the issues, as I have defined them, is whether any claim by Mr. Berezovsky based on his alleged intimidation by Mr. Abramovich is time-barred as a matter of Russian or English law? (As I have already described, it was common ground that, if French law was the appropriate law, the claim was not time-barred.)

967. So far as Russian law is concerned, Issue A7 addresses Issues 11 (2) and (3) of the Agreed List of Issues, namely:

> "(2) Did Mr. Berezovsky refrain from bringing proceedings against Mr. Abramovich within the limitation period (which expired in 2004) because he remained in fear as to the steps which Mr. Abramovich might take (a) to prevent Mr. Glushkov's release from prison, and/or (b) to influence the ongoing prosecution of Mr. Glushkov?
>
> (3) If so:
>
> (a) Would it be an abuse of right within the meaning of Article 10 of the Russian Civil Code for Mr. Abramovich to rely on the expiry of the limitation period?
>
> (b) Is there a compelling reason for reinstating the limitation period pursuant to Article 205 of the Russian Civil Code?
>
> (c) Would the Claimant, in the light of all the circumstances as found by the Court, be unable to rely on Article 205 of the Russian Civil Code by reason of the fact that Mr. Glushkov left Russia in July 2006 and proceedings were issued in June 2007?
>
> (d) Should the Russian limitation be disapplied and the English limitation be applied on the basis that the application of Russian law would cause Mr. Berezovsky to suffer 'undue hardship' within the terms of section 2(2) of the Foreign Limitation Periods Act 1984?"

968. For reasons which I have already described, in the light of my determination of the earlier issues, these issues have become moot. It would be inappropriate for me to attempt to decide them on a hypothetical basis and I do not propose to do so.

969. For similar reasons, it is not necessary for me to decide the various legal and factual issues relating to the parties' respective arguments as to whether Mr. Berezovsky's claim is time-barred, if it is governed by English law.

Executive summary and conclusion on Issues 5, 6 and 7

970. In the light of my earlier findings, it is not necessary for me to decide Issue 5, namely what is the proper law governing Mr. Berezovsky's alleged claim of intimidation, since whichever is the applicable law, he has not made out his claim on the facts. Accordingly I do not do so. My provisional view is that the governing law of the intimidation claim is Russian law.

971. Irrespective of whether the proper law governing the claim is Russian, French or English law, my conclusion on Issue 6, based on my factual findings that there was no intimidation, is necessarily that no liability in tort or delict has arisen under the relevant law. In the circumstances, there is no need for me to decide the detailed issues of Russian substantive and procedural law as to whether Mr. Abramovich's conduct fulfilled the conditions of liability under article 1064 of the Russian Civil Code and accordingly I do not do so.

972. In the circumstances Issue 7 does not arise for determination. Therefore it is not necessary or appropriate for me to decide, on a hypothetical basis, whether, if Mr. Berezovsky had a claim, it would be time-barred under Russian or English law. Accordingly I do not determine Issue 7.

Section XIV - Issue B1: Did Mr. Berezovsky acquire any interest in the pre-merger aluminium assets?

The wider relevance of Mr. Berezovsky's case in relation to RusAl

973. As I have already explained[470], the evidence relating to RusAl had a wider resonance than simply a determination of the RusAl issues. That was because it was necessary to look at the business relationship between Mr. Abramovich, on the one hand, and Mr. Berezovsky and Mr. Patarkatsishvili on the other, as one continuum. It was common ground that it was legitimate to look at the subsequent conduct of the parties for the purposes of determining whether the alleged 1995 and 1996 Agreements had been concluded, whether in the terms alleged by Mr. Berezovsky, or at all. For that reason, I have taken into account the evidence relating to the RusAl issues and, in particular, the conduct of the respective parties before, at the time of, and after the RusAl merger, and Mr. Abramovich's payment of $585 million to Mr. Patarkatsishvili, in coming to the logically prior conclusion as to whether the relationship between Mr. Abramovich and Mr. Berezovsky was the contractual relationship alleged by Mr. Berezovsky or the *krysha* relationship alleged by Mr. Abramovich.

974. Thus the exercise of assessing the evidence relating to the RusAl issues has involved: first, a consideration as to whether the evidence supports Mr. Berezovsky's case in relation to the alleged 1995 and 1996 Agreements; and second, a consideration as to whether the evidence relating to RusAl issues, taken, as it were, on a freestanding basis, supports his case in relation to the those issues - namely whether he had an interest in RusAl and whether he had contractual rights in relation to such interest against Mr. Abramovich, Mr. Patarkatsishvili and Mr. Deripaska as a result of any agreement reached at the Dorchester Hotel meeting. This has involved a consideration *inter alia* of the evidence relating to the acquisition of the pre-merger assets, the meeting at the Dorchester Hotel, the documentation relating to two sales of tranches of RusAl shares, the payment to Mr. Patarkatsishvili, the "Curtis notes" of a meeting in Georgia with Mr. Patarkatsishvili and others; and briefing notes of sessions with Mr. Patarkatsishvili in 2005 and 2007.

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470 See paragraph 11, Section I above.

Introduction

975. Issue B1 of the liability issues, as I have defined them, is:

> **"Issue B1**: Was an agreement made between Mr. Abramovich and Mr. Berezovsky (i) in 1995 or (ii) in late 1999, the effect of which was that Mr. Berezovsky would have an interest in any aluminium producers which might be acquired by Mr. Abramovich or his companies (in the event the Bratsk and KrAZ assets)?"

976. Issue B1 correlates to Issue 16 in the Agreed List of Issues, which is in the following terms:

> "Did Mr. Berezovsky acquire any interest in any Russian aluminium industry assets prior to the meeting at the Dorchester Hotel in March 2000 (other than as a result of any bilateral joint venture between Mr. Berezovsky and Mr. Patarkatsishvili)?"

Issue B1 also corresponds with Overlap Issue 1.

Mr. Berezovsky's pleaded case in relation to RusAl

977. I have already set out Mr. Berezovsky's pleaded case in relation to RusAl at paragraph 7, Section I, of this judgment and, although it should be re-read at this juncture, I do not repeat it here.

Executive summary in relation to Issue B1

978. I conclude that no agreement was made between Mr. Abramovich and Mr. Berezovsky either in 1995 or in late 1999, the effect of which was that Mr. Berezovsky would have an interest in any pre-merger aluminium assets (in the event the Bratsk and KrAZ assets). Mr. Berezovsky did not have, or acquire, any interest in any pre-merger aluminium assets prior to the meeting at the Dorchester Hotel in March 2000, as a result of any agreement with Mr. Abramovich. I make no determination in relation to any claim by Mr. Berezovsky that he acquired such an interest as a result of the alleged joint venture agreement asserted by him in the main Chancery action which is not for determination in these proceedings. There was no agreement that any interest in the pre-merger aluminium assets should be paid for out of Mr. Berezovsky's entitlement to Sibneft or Sibneft related profits, and no contribution was in fact made by Mr. Berezovsky to the cost of the acquisition. I accept Mr. Abramovich's evidence that he alone purchased the aluminium assets (through companies owned or controlled by him) pursuant to the terms of an agreement purportedly dated 10 February 2000 ("the Master Agreement") and specifically pursuant to ten individual sale and purchase contracts also purportedly dated 10 February 2000. I conclude that the other two individuals named in the Master Agreement as purchasers, namely Mr. Patarkatsishvili and Mr. Shvidler, assisted him to close the transaction but did not thereby acquire any interest in such assets. I accept Mr. Abramovich's case that Mr. Patarkatsishvili's role in the transaction was as intermediary and facilitator, and for those services

Mr. Abramovich agreed to pay him a fee, not only for his services as an intermediary, but also for providing *krysha* in a difficult environment, where his association with the purchase of the aluminium assets was essential. I conclude that neither Mr. Berezovsky nor Mr. Patarkatsishvili had any interest in any of the companies which acquired the pre-merger aluminium assets.

Common ground in relation to the acquisition of the aluminium assets

979. Mr. Berezovsky's pleaded case was that he had an interest in RusAl, as a result of his earlier interest in certain pre-merger aluminium assets, namely those which were referred to at trial as the Bratsk and KrAZ assets.

980. In relation to this issue, the following appeared to be common ground. If, and in so far as, any matter was not common ground, I find such matters proved as facts.

981. By late 1999 a number of the key players in the Russian aluminium industry, namely Mr. Vasily Anisimov and the Trans World Group ("TWG") (owned by Mr. Lev Cherney[471] and the Reuben brothers and managed by Mr. Dmitry Bosov), had decided to attempt to sell their interests in a portfolio of aluminium assets located in the Krasnoyarsk region of Siberia ("the KrAZ assets"). According to Mr. Reuben and other evidence, Mr. Bosov was associated with TWG and had some small participation in some of the aluminium businesses associated with TWG.

982. Mr. Abramovich agreed to enter into negotiations for the purchase of the KrAZ assets on the condition that TWG also sold other aluminium assets which it owned in the Bratsk region of Siberia ("the Bratsk assets"). Negotiations took place at the end of 1999 or in early 2000 which resulted in the signing of the Master Agreement purportedly dated 10 February 2000, but actually concluded on 15 February 2000 and backdated.

983. By the Master Agreement each of Mr. Lev Cherney, Mr. Reuben, Mr. Bosov and Mr. Anisimov (and the companies they represented) agreed to sell the aluminium assets identified in the agreement. These assets comprised shares in OAO Krasnoyarsk Aluminium Plant (KrAZ), OAO Krasnoyarsk Hydro-Electric Power Station (KrGES), OAO Bratsk Aluminium Plant (BrAZ) and OAO Achinsk Alumina Refinery Plant (AGK). The counterparty to the agreement, designated as 'Party 1', was described in the agreement as comprising Mr. Abramovich, Mr. Shvidler and Mr. Patarkatsishvili and the companies represented by them. Mr. Berezovsky was not named in the Master Agreement as being a party to the transaction.

984. The Master Agreement contemplated that separate purchase and sale contracts would be made for each of the aluminium assets to which it related. Ten such separate sale and purchase agreements were executed, each also purportedly dated 10 February 2000 but also backdated. The sellers were the various corporate entities that owned the underlying aluminium assets, and the purchasers were four offshore companies: Galinton Associated Ltd ("Galinton"), a BVI registered company; Palmtex Ltd ("Palmtex"), a Panamanian registered company; Dilcor International Ltd ("Dilcor"), a BVI registered company; and Runicom Fort Ltd ("Runicom Fort"), a Gibraltar registered company (collectively "the Offshore Companies"). The Offshore

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[471] He was the brother of Michael Cherney; an alternative spelling was Chernoi.

Companies were ultimately controlled by Mr. Abramovich and they ultimately became the initial shareholders in RusAl.

985. The original purchase price for the pre-merger aluminium assets, as stated in the Master Agreement, was $550 million. This was increased subsequently, apparently at the request of Mr. Patarkatsishvili, to $575 million as recorded in an agreement referred to as Protocol No. 2 dated 14 February 2000.

986. At some subsequent stage Commission Agreements were executed between Mr. Patarkatsishvili and each of these four companies which recorded an entitlement to the payment of commission in respect of services rendered in relation to the aluminium acquisition. Mr. Patarkatsishvili had these Commission Agreements notarized in Moscow on 16 March 2000, a few days after the meeting at the Dorchester Hotel.

The basis of Mr. Berezovsky's claim that he had an interest in the pre-merger aluminium assets

987. By the date of the trial, there were three bases upon which Mr. Berezovsky claimed that he had an interest in the KrAZ and Bratsk assets.

The first basis – rights under the alleged 1995 Agreement

988. Until his pleadings were amended at the outset of the trial, as described above, the only basis put forward by Mr. Berezovsky was his rights under the alleged 1995 Agreement that Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would be entitled to participate in any future business venture of any of them, in the same proportions as it was alleged that they shared in Sibneft. As I have already described, that formulation was modified in Mr. Berezovsky's fourth witness statement, in which he asserted for the first time that the agreement in 1995 was merely that each of them would have a right of first refusal in relation to the others' future business ventures.

989. It was common ground between the experts on Russian law that the alleged term of the 1995 Agreement relating to future business (even if construed as a right of first refusal) lacked the certainty in definition which such an obligation would require, in order to be effective in Russian law. But even leaving that point to one side (on the basis that, as Mr. Rabinowitz suggested, the parties might have acted on an agreement they had supposed to be legally effective, despite the fact that it actually was not) the evidence which I have already analysed above demonstrated that there was no such agreement in 1995 in relation to future business as alleged. In summary, it was wholly implausible that Mr. Berezovsky would have agreed in 1995 that Mr. Abramovich, who at that time Mr. Berezovsky hardly knew and whose track record in his business hardly rated, was going to have a right of first refusal in relation to 50% of any future business venture of Mr. Berezovsky's, even if that venture was entirely conceived and managed by someone else, for example, Mr. Patarkatsishvili. I conclude that there is nothing in the evidence relating to the RusAl issues, which I summarise below, which provides me with any reason to change my view in this respect.

The second basis – the alleged 1999 Agreement

990. The second basis for Mr. Berezovsky's claim to an interest in the pre-merger aluminium assets was that Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili made a specific oral agreement in late 1999 ("the alleged 1999 Agreement") to apply the alleged 1995 Agreement to the acquisition of aluminium assets. It appears that this argument first surfaced as a result of the view taken by Dr. Rachkov, Mr. Berezovsky's Russian law expert, that it was implicit in paragraphs 250-263 of Mr. Berezovsky's fourth witness statement that such an agreement had been made. Dr. Rachkov opined that the paragraphs:

> "… describe an agreement to acquire the Aluminium Assets on the same terms and in accordance with the 1995 Agreement…In summary, the parties agreed that the Aluminium Assets would be the subject of the partnership that they had agreed in 1995."[472]

991. These paragraphs of Mr. Berezovsky's fourth witness statement read as follows:

> "**ii) Acquisition of initial aluminium interests**
>
> 250 The opportunity to invest in the aluminium industry came about because in 1999, as in 1995, the political situation in Russia was largely uncertain due to the upcoming Parliamentary and presidential elections. As a result, many businessmen started to sell their Russian assets. Contrary to the views of many others, I believed in the likelihood of victory of the democratic candidates in the elections and, I therefore continued to invest in business in Russia.
>
> 251 In the winter of 1998-9, Lev Cherney (the brother of Michael Cherney and the business associate of the Reuben brothers who operated through Transworld Group) approached me to assist in resolving a dispute in relation to the aluminium plants at Krasnoyarsk between the owners and the governor of the Krasnoyarsk region, General Lebed.
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> 252 As described at paragraph 162 above, I had close contacts with General Lebed. After President Yeltsin sacked him from his post as Secretary of the Security Council, I supported and lobbied for him in the elections for the position of Governor of the Krasnoyarsk region in 1998, which he won.
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> 253 I went to Krasnoyarsk myself and had negotiations with General Lebed, and with the Chairman of the board of the Krasnoyarsk aluminium plant, Anatoly

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472 Rachkov 4th expert report, paragraphs 283.

Bykov. I managed to bring them to the negotiating table and there mediated an agreement between them. I should say that I have seen that this episode is inaccurately described in paragraphs 249 to 250 in Mr. Marino's first statement in this action. Having considered very carefully the position I can confirm that the paragraphs above are accurate.

254 Later in 1999, Dmitry Bosov (a Russian businessman and Manager of the Transworld Group) approached me with the proposal that my group purchase various aluminium interests in Bratsk and Krasnoyarsk. Badri also had extensive discussions with David Reuben, on behalf of the Reuben brothers from January 2000 onwards. We had not previously considered investing in the aluminium industry, although of course I was aware that it was a very important industry in Russia and a very profitable business. I discussed the possibility with Badri and we decided that a buy-out of the existing owners of these aluminium assets was worthwhile.

255 Badri informed me that Oleg Deripaska and Mr. Fridman were also interested in acquiring those aluminium assets for their respective groups (Sibal and Alfa).

256 Badri and I raised the Bosov proposal with Mr. Abramovich, as we considered we were obliged to do in accordance with our 1995 agreement with him. Mr. Abramovich said that he would need to discuss it with Mr. Shvidler and made the point that he was not knowledgeable about the aluminium sector. Mr. Abramovich ultimately agreed to the proposal. Mr. Abramovich asked that my name should not appear as an interested party in the new aluminium venture because of my political exposure, just as he had requested with Sibneft.

257 I should say that although I have mentioned Mr. Bosov, it was Badri who was the deal-maker with regard to the purchase of the Bratsk and Krasnoyarsk assets. When Mr. Bosov tried to present himself to us as being the party who should lead the negotiations and make the deal, I recall Badri saying to me that this should be his, Badri's, role as it was he that had good relations with key participants in the aluminium industry, such as Lev Cherney, Vasily Anisimov and the Reuben brothers. Badri also had extensive discussions with David Reuben, on behalf of the Reuben brothers from January 2000 onwards.

258 As far as I was aware, throughout this period, Badri remained totally loyal to me and supported me in my political struggle. It was important to Badri and to me, particularly in view of my tension with the Russian authorities, that the aluminium assets were, insofar as possible, kept out of reach from politically motivated attacks. As I have set out above, by this point I had already come under attack from Prime Minister Primakov, there had been raids on my businesses and I had been indicted on baseless charges (which were later dropped) relating to what was alleged to be an unlawful business activity in connection with Aeroflot. For this reason, we agreed at Mr. Abramovich's request that Badri's and my interest in the aluminium assets subsequently acquired on behalf of the three of us would not be made visible and would instead be held by Mr. Abramovich through offshore corporate vehicles.

259 Indeed, when Badri and Mr. Abramovich were negotiating the acquisition of these aluminium interests, they told me that they were making the arrangements through offshore structures and subject to Western law to provide us with greater protection against abusive interference by the Russian authorities. The interests acquired comprised interests in factories and related businesses at Bratsk, Krasnoyarsk and Achinsk, including interests in OJSC Krasnoyarsk Aluminium Plant, OJSC Krasnoyarsk Hydro-Electric Power Station, OJSC Achinsk Alumina Complex, and OJSC Bratsk Aluminium Plant. (I visited the Krasnoyarsk aluminium plant, and the Krasnoyarsk hydro-electric power station myself in the summer of 1999 or 2000, to familiarise myself with my investments. I met there with the General Director of the Krasnoyarsk Aluminium Plant, Alexey Barantsev).

260 We agreed that the purchase price of the aluminium assets would be paid for from our entitlement of Sibneft profits. As with Sibneft, the Abramovich/Berezovsky/Patarkatsishvili interest in the aluminium assets were subject to a 50:50 split between Mr. Abramovich on the one hand, and Badri and me on the other, in accordance with the agreement made regarding future business interests and in accordance with the use of Sibneft profits to acquire the assets. Badri's and my share was the subject of our own Joint Venture agreement referred to above (i.e. that, being a commercial venture, our interest in the aluminium business would be shared 50:50).

261 There was some disagreement during the discussions as to who would manage the aluminium business. Badri wanted to manage the aluminium business himself, whereas I preferred that Mr. Abramovich should have this responsibility as it was important that Badri should continue concentrating on managing ORT. Owing to the scale of the aluminium business we were setting up, I was concerned that if Badri were to manage it he would have to stop managing ORT. ORT was the priority for me at the time, particularly in view of the forthcoming Presidential elections in Russia in 2000. Just as he had in 1995 when I asked him to concentrate on managing in ORT, at this time too Badri agreed to do as I has requested.

262 I was not involved in the detailed discussions leading up to the purchase of the aluminium assets. I have been shown a copy of the contract (which is dated 10 February 2000 and is for the sale and purchase of various aluminium assets comprising shares in OJSC Krasnoyarsk Aluminium Factory, shares in OJSC Krasnoyarsk Hydro-Electric Power Station, shares in OJSC Bratsk Aluminium Plant, the business of Bratsk and the shares in and business of a group of assets defined in the contract as "the Siberian Complex" (which included Achinsky Integrated Aluminium Works). The purchasers under the agreement are said to be Mr. Abramovich, Mr. Shvidler and Badri (all three are signatories to the contract and enter into it on their behalf and on behalf of companies represented by them). US$550 million was to be paid as the purchase price for the assets. Although I was not a signatory to the agreement, I consider that I acquired interests under it as a result of the agreements with Badri and with Mr. Abramovich that I have discussed above. Another formal reason for not signing this personally was that I was a member of the Duma at this time, and I was aware that under Russian law I was not allowed to be directly involved in business and could not put my signature on this agreement. I am surprised that Mr. Abramovich signed it personally despite being a member of the Duma as well. It was reflected in the contemporary press (both Russian and Western) which reported that I was one of the purchasers of the aluminium assets.

263 Although I was not involved in deciding on or in implementing the structures for the vehicles used to receive the acquired aluminium interests that I have just discussed, my understanding was that the vehicles

> used would be Western entities, contracting under a non-Russian system of law (probably English – what we often called "British" law – or similar) in order to protect the aluminium interests against the kind of attacks I had experienced on my businesses in 1999, as well as to make them more tax efficient."

As a result, Mr. Berezovsky's Particulars of Claim were re-amended shortly, before trial, to plead the alleged 1999 Agreement.

992. Although Mr. Abramovich submitted that the new method of formulation of Mr. Berezovsky's claim to an entitlement to the pre-merger assets was dependent upon there having been a valid agreement in 1995 in relation to Sibneft (on the basis that there were otherwise theoretically no terms which could be applied to the acquisition of the aluminium assets[473]), I prefer to approach my consideration of the evidence relating to the alleged 1999 Agreement, on a favourable basis to Mr. Berezovsky, that it was a freestanding agreement, independent of the alleged 1995 Agreement, although the terms of the alleged 1999 Agreement might have been similar, or agreed by reference, to the terms of the alleged 1995 Agreement. What was clear was that the alleged 1999 Agreement sought to avoid the problem about the uncertainty of the alleged provision about future business contained in the alleged 1995 Agreement, by positing a specific agreement to apply the same terms to the acquisition of the aluminium assets.

993. In approaching the evidence in relation to the alleged 1999 Agreement on a freestanding basis, I have therefore disregarded Russian law technicalities about whether the alleged 1999 Agreement could have been valid, if there had been no earlier concluded or valid 1995 Agreement. I have assumed, in favour of Mr. Berezovsky, that the later agreement could have been valid, as a matter of Russian law, irrespective of the existence, or validity, of the earlier 1995 Agreement.

994. However, notwithstanding the court's approach, Mr. Berezovsky's own direct evidence, both in his written evidence, and in cross-examination, was extremely weak when it came to attempting to establish the existence of a new oral agreement in 1999 whereby he, Mr. Patarkatsishvili and Mr. Abramovich agreed that he and Mr. Patarkatsishvili were to have a 50% interest in the relevant aluminium assets. The evidence in Mr. Berezovsky's fourth witness statement, quoted above, hardly supported such an agreement. It did not refer to any new agreement with Mr. Abramovich. The only express reference to the alleged 1995 Agreement was in paragraph 256, which itself only alleged that, when Mr. Berezovsky and Mr. Patarkatsishvili approached Mr. Abramovich with Mr. Bosov's proposal, they thought that they were obliged to do so under the term of the alleged 1995 Agreement relating to future business. Mr. Berezovsky did not say in those paragraphs that the 1995 agreement was ever mentioned to Mr. Abramovich, in connection with the proposal; nor did he say that any new agreement was made by reference to what was supposed to have been agreed in 1995; nor did he suggest that, irrespective of any

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473 Dr. Rachkov made no suggestion that the alleged 1999 Agreement could stand if the alleged 1995 agreement were non-concluded or invalid as a matter of Russian law; Professor Maggs confirmed that only a subsisting contract can be amended: Maggs 2nd expert report, paragraph 38. Rozenberg 4th expert report, paragraph 405 is to the same effect.

reference to the alleged 1995 Agreement, the three men agreed that the new aluminium interests would be held as to 50% by Mr. Abramovich and as to 50% by Mr. Patarkatsishvili and Mr. Berezovsky.

995. Mr. Rabinowitz sought to rely on paragraph 260 of Mr. Berezovsky's fourth witness statement and suggested that Mr. Berezovsky had not been cross-examined on that paragraph. However that paragraph, apart from the statement that "We agreed that the purchase price of the aluminium assets would be paid for from our entitlement of Sibneft profits" did not deal with any new agreement with Mr. Abramovich; the reference to the interests in the aluminium assets being subject to a 50:50 split between Mr. Abramovich on the one hand, and Mr. Patarkatsishvili and Mr. Berezovsky on the other, "in accordance with the agreement made regarding future business interests and in accordance with the use of Sibneft profits to acquire the assets [i.e. the alleged 1995 Agreement]", again did not refer to any new agreement, or suggest that Mr. Berezovsky or Mr. Patarkatsishvili had mentioned the alleged 1995 agreement, or its terms, when negotiating with Mr. Abramovich in 1999 or had expressly agreed, even without any reference to any earlier agreement, that their respective interests in the relevant aluminium assets were to be held 50:50. Moreover I reject the suggestion that Mr. Berezovsky was not cross-examined on paragraph 260 of his fourth witness statement. Although the specific paragraph was not put to him expressly, he was challenged on his evidence in relation to the alleged 1999 Agreement, at Day 9, pages 6-12, and was given every opportunity to explain what he said had been agreed with Mr. Abramovich. All he in fact claimed in cross-examination was that Mr. Bosov had proposed to him that Mr. Berezovsky should acquire assets in the aluminium sector, which Mr. Bosov did not actually identify at the time, but which turned out later to be the four businesses constituting the pre-merger aluminium assets[474]; that he had discussed Mr. Bosov's proposal with Mr. Patarkatsishvili, who had said that he had received the same proposal from Mr. Anisimov "and from people who are involved in that business" and that Mr. Patarkatsishvili had overplayed his role by suggesting that he had initiated the deal; that he and Mr. Patarkatsishvili had then met Mr. Abramovich and they proposed that Mr. Abramovich and possibly also Mr. Patarkatsishvili should follow up Mr. Bosov's proposal; and that Mr. Abramovich said that he would think about it, and later agreed to do so.[475] Mr. Berezovsky did not suggest that the 1995 agreement was mentioned, nor that any reference was made to the rights and obligations said to have been assumed in 1995. There was no suggestion that anyone thought that a fresh agreement was being made. The discussion, as Mr. Berezovsky described it, was even vaguer than the alleged agreement about future business in 1995.

996. Mr. Abramovich denied that he had ever agreed in 1999, or at any other time, to participate with Mr. Berezovsky and Mr. Patarkatsishvili in the acquisition of the aluminium assets on the same terms as the alleged 1995 Agreement. His fourth witness statement set out his evidence on this issue as follows:[476]

> "138. Mr. Berezovsky alleges that, prior to the Agreement dated 10 February 2000 for the purchase of aluminium assets, he and I had a discussion (during which

474 Berezovsky Day 9, pages 6-7.
475 Berezovsky Day 9, pages 7-11.
476 Abramovich 4th witness statement, paragraphs 138-139.

> Mr. Patarkatsishvili was also present), which mentioned a proposal of Mr. Bosov to acquire interests in these assets. In Mr. Berezovsky's version, initially I had said that I would have to discuss the proposal with Mr. Shvidler. In the end, I allegedly agreed to the proposal, provided however that Mr. Berezovsky would not be mentioned as an interested party. Then we allegedly agreed that the acquisition of the aluminium assets would be carried out through offshore entities pursuant to Western law and we also agreed that the purchase price was to be paid from the proceeds of Sibneft (Berezovsky 4, paragraphs 256-262). None of this is true. Mr. Berezovsky had nothing to do with the deal for acquisition of aluminium assets and so all of the matters we allegedly discussed are a fiction. I do not recall any such discussions about or with Mr. Bosov before the negotiations on acquiring the aluminium assets at the beginning of 2000. So far as my role was concerned, the introduction to buy the assets came only from Mr. Patarkatsishvili. I do recall that Mr. Patarkatsishvili subsequently mentioned to me Mr. Bosov claimed a share of his commission but that was not a concern of mine (as I explain further in paragraphs 155 and 158-161 below).
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> 139. Mr. Berezovsky also alleges that he had decided that I was going to manage the aluminium assets, although Mr. Patarkatsishvili wanted to do that himself. In Mr. Berezovsky's version, he preferred Mr. Patarkatsishvili to focus on ORT (Berezovsky 4, paragraph 261). As I already stated, Mr. Berezovsky had no involvement in the management of the aluminium assets and for this reason he simply could not have expressed any such wishes. As I recall, Mr. Patarkatsishvili did want the enhanced status of a CEO or similar position. His main role at that time was to represent and look after Mr. Berezovsky's interests in ORT. However, I had no direct discussion with Mr. Patarkatsishvili on the subject of a management position."

997. Mr. Abramovich's evidence on this point was not challenged during the course of his cross-examination. However since Mr. Berezovsky relied upon numerous other evidential matters, apart from his own direct evidence, to support his contention that there was an agreement concluded in 1999 in relation to his agreed participation in the acquisition of aluminium assets, and that this supported his prior case as to the alleged 1995 and 1996 Agreements, it is not appropriate that I should simply rely on the technical point that Mr. Abramovich's account was not directly challenged in cross-examination, and, on that basis, accept the latter's evidence.

The third basis – interest in pre-acquisition assets paid for out of Mr. Berezovsky's share of Sibneft profits

998. The third basis put forward by Mr. Berezovsky to support his case that he had an interest in the pre-merger aluminium assets was that his interest was paid for from his and Mr. Patarkatsishvili's share of Sibneft profits. I address the evidence relating to this topic below.

The evidence relied upon by Mr. Berezovsky as supporting his case that he acquired an interest in the pre-merger aluminium assets

999. Apart from his own direct evidence of the alleged 1999 Agreement, Mr. Berezovsky relied upon a number of evidential matters to support his case that he had acquired an interest in the pre-merger aluminium assets pursuant to the alleged 1999 Agreement and consistently with what he alleged had been agreed in 1995 and 1996. Basically his thesis was that the evidence demonstrated the critical role which he had played in the acquisition of the pre-merger aluminium assets and in putting the deal together. This, he contended, not merely supported his account of the alleged 1999 Agreement, but more than amply justified his claimed entitlement thereunder. First of all he sought to suggest that he was the recipient of the initial proposal from Mr. Bosov in late 1999 and that this proposal had originated as a result of the key contacts which he and Mr. Patarkatsishvili had cultivated in the aluminium industry in 1998-1999. In particular, he suggested that his close links with General Lebed had been critical to the successful acquisition of the Krasnoyarsk assets. Second, he sought to suggest that it was not only Mr. Patarkatsishvili, but he, Mr. Berezovsky, as well, who was involved in bringing Mr. Bosov's proposal to Mr. Abramovich and persuading Mr. Abramovich to proceed with the transaction. Third, Mr. Berezovsky claimed that he had been "the key person who had made this deal happen" and suggested that he had had many meetings with the sellers, in particular Mr. Lev Cherney, Mr. Reuben and Mr. Anisimov, at which key aspects of the acquisition had been discussed. Fourth, Mr. Berezovsky suggested that the terms of the Master Agreement showed that he was, although not expressly identified as a purchaser under the Master Agreement, in fact such a purchaser. Fifth, he said that he and Mr. Patarkatsishvili also agreed to Mr. Abramovich's request that their interests in the aluminium assets subsequently acquired would not be made visible and would instead be held by Mr. Abramovich, because of the danger of politically motivated attacks. Sixth, he relied upon what he said were the views of the sellers and purchasers under the Master Agreement which he said demonstrated that they thought he was indeed a purchaser of the pre-merger aluminium assets. Seventh, he relied upon certain press reports to support his assertion that he was, and that everybody thought he was, a purchaser, of the assets. Eighth, he relied upon comments made by Mr. Patarkatsishvili prior to his death which he said "consistently acknowledged to third parties that both himself and Mr. Berezovsky had acquired an interest in the aluminium assets in February 2000"[477].

1000. I analyse this evidence below. I conclude that, contrary to his contention, it does not establish that Mr. Berezovsky had any interest in the pre-merger aluminium assets.

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477 See paragraph 1144 *et seq* of Mr. Berezovsky's written closing submissions.

The state of the Russian aluminium industry in the 1990s and the events leading up to the acquisition of the pre-merger aluminium assets

1001. In order to evaluate Mr. Berezovsky's and Mr. Abramovich's respective cases relating to the acquisition of the pre-merger aluminium assets, and to place the Master Agreement in its proper context, one has to look at the turbulent background to the Russian aluminium industry in 1999-2000. Mr. Anisimov (who was one of the sellers of the KrAZ aluminium assets) gave a vivid description in his oral evidence as to what he referred to as "the aluminium wars", during which "unbridled criminality reigned from 1994 to 1997". He described how these difficult conditions meant that those involved in the aluminium business were subject to threats to their personal safety and how there was routine and unwarranted interference with their commercial interests by various regional authorities. Mr. Anisimov gave two examples of the problems which he and his staff at plants in the Krasnoyarsk region faced at the time. The first example he gave was the threats experienced by his staff, who were, on one occasion, met at the airport by a criminal gang and driven to a cemetery; there the staff were shown graves and told that, if they continued working in Krasnoyarsk, the same fate would await them. The second example related to the involvement of law enforcement agencies, who raided the plants and intercepted supplies of raw materials. Mr. Anisimov referred to the fact that 70 people had been murdered in Krasnoyarsk and how no one trusted anyone else at the time.[478]

1002. In 1999 Mr. Anisimov met Mr. Patarkatsishvili, whom Mr. Anisimov regarded as a high profile and well-connected individual within Russia at that time. They became very close friends. Mr. Anisimov asked Mr. Patarkatsishvili for his help in alleviating the pressure. Thereafter, however (and even though Mr. Anisimov understood that Mr. Patarkatsishvili was trying to assist him), the situation did not improve. By the end of 1999 the aluminium plant at Krasnoyarsk was in a desperate situation, and coupled with concerns about his personal safety, and that of his employees, Mr. Anisimov was effectively forced out of business and decided to sell his share of the aluminium assets as quickly as possible.

1003. In addition to speaking to his fellow shareholders, Mr. Anisimov contacted Mr. Patarkatsishvili, who suggested that Mr. Anisimov approach Mr. Abramovich. Mr. Anisimov contacted Mr. Abramovich and thereafter (according to Mr. Anisimov) Mr. Patarkatsishvili played a leading role in orchestrating the negotiations between the sellers and Mr. Abramovich concerning the sale. He also described how, at the same time, negotiations were also ongoing in parallel with the members of TWG, who were conducting separate, private negotiations with Mr. Abramovich in respect of some of their aluminium assets (known as the "Bratsk assets"). I accept Mr. Anisimov's evidence as summarised above.

1004. A further good description of the background to the Russian aluminium industry (which was not disputed), together with Mr. Abramovich's evidence of the role played by Mr. Patarkatsishvili, and the absence of any participation by Mr. Berezovsky (both of which were disputed), is found in extracts from paragraphs 144-154 of Mr. Abramovich's third witness statement, which, because of its importance, I quote in some length:

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[478] See generally Day 31 pages 107-108 and paragraphs 29-35 of his first witness statement.

"*Background*

144. Mr. Berezovsky had absolutely nothing to do with any part of my involvement in the aluminium industry and in particular had nothing to do with either the formation of RusAl or the sale of my interests in it.

145. Prior to 2000, the Russian aluminium industry was disorganised, its assets were split between a number of different owners, and some of the players in the industry resorted to forceful methods and violence to protect their interests. There had been many reports of killings that reached Moscow (the violence was so intense that back then they used to refer to it as "aluminium wars"), so the state of the industry had become publicly known. The major aluminium smelting plant in Krasnoyarsk had been virtually starved of resources and was scarcely able to operate; there were many other problems as well. In the late 1990s, I did not know much about the aluminium industry, although people around me and myself realised that coupled with my ability for successfully building relationships and meeting others halfway on reasonable terms, my experience working in the oil industry would help me sort out the aluminium industry as well. I knew well the benefits that could come from, for example, combining production and marketing companies in an efficient way and installing capable management. There were also safety benefits in bringing under centralised corporate management the assets and cash flows of an individual plant. To put it simply, local gangsters' ability to extort money could be undermined in circumstances where local plant managers no longer had the power and control over the cash in the business. It is much harder to target or intimidate a faceless large corporation than it is a local businessman.

146. By late 1999 I knew most, if not all, the major players in the aluminium industry, and that a number of them wanted to get out. Notwithstanding that I could see the potential for bringing the businesses together, I still was not keen to get involved in the industry, given its violent and unstable history. Criminal groups were fighting fierce battles for control of the profits generated by the aluminium industry and dozens of business men (most famously, Mr. Vadis Yafyasov, Mr. Oleg Kantor and Mr. Felix Lvov) had been killed in this struggle for control. Whilst the level of violence in the industry had diminished somewhat by

the late 1990s, it was still a potentially dangerous business and there was a real need for anyone wishing to get involved in it to have physical *krysha* to ensure control and stability.

147. Towards the end of 1999, I had further approaches about getting involved with this industry. By this time, it was not unusual for different people to bring me various business ideas and ask me to invest in a particular sector. Among them were some of those whom had acquired shares in the aluminium businesses during the privatisation period.

148. One person in particular that promoted the idea of involvement in the aluminium business with considerable force was Mr. Patarkatsishvili. In late 1999 or January 2000, Mr. Patarkatsishvili proposed that I should buy out the aluminium assets of Mr. Lev Cherney, the Reuben brothers and Mr. Vasily Anisimov. It sounded as if he had been trying to achieve something with some of the owners himself but did not have the ability to get anything off the ground. I have no idea if he was seeking to do this on his behalf or whether he told any of them that Mr. Berezovsky was involved. When he approached me, however, it was on the basis that he was prepared to act as an intermediary so that I could acquire the shares. There was absolutely no discussion or mention of a joint ownership and no mention at all to me of Mr. Berezovsky being involved.

149. As I said above, anyone seeking to get involved in this industry needed serious *krysha* (the physical protection). I realised that, with Mr. Patarkatsishvili's assistance as an intermediary, it might well be possible to acquire these assets at a competitive price and try to replicate some of my oil industry success in the aluminium industry. I discussed this idea with Mr. Shvidler and he began negotiating with Mr. Anisimov, who became the representative of that group for this purpose, to see what might be possible.

Mr. Patarkatsishvili's role in my acquisition of aluminium assets

150. Mr. Patarkatsishvili worked with Mr. Shvidler and myself to try to reach a deal for the acquisition of the assets. At first, Mr. Patarkatsishvili and I did not discuss expressly what Mr. Patarkatsishvili's remuneration or fee would be for the 'intermediary' work he would perform. At that stage it was not clear

what could be acquired since there were plenty of minority shareholders divided against each other. Nor was it clear how much these businesses might cost, considering that the state of the various plants and other assets was unclear due to the difficult financial circumstances and lack of investment in the industry for a number of years. The industry was in heavy debt to energy suppliers (which meant that the supply of electricity could be cut at any moment, which could cause serious problems since aluminium is produced in a continuous cycle) and also to its employees for back wages. For example the workers at the Krasnoyarsk plant had not been paid for some time and the plant could easily have come to a permanent halt. There were many risks and uncertainties at this stage. Consistent with *krysha* principles, there was initially just an understanding between us that Mr. Patarkatsishvili would work with me and Mr. Shvidler to see if a suitable deal could be done, and if he were successful, I would pay Mr. Patarkatsishvili an appropriate fee for his efforts. This understanding was subsequently confirmed in writing between us (as described further below). We definitely did not discuss or agree that he would receive a percentage of the ownership of the assets or any shares or any rights to shares. The essence of our understanding was that Mr. Patarkatsishvili would only provide important services to help me acquire the assets.

151. Mr. Patarkatsishvili indeed performed a vital role in my acquisition of these assets. He seemed to have a good rapport with two of the owners of the aluminium-related businesses from whom I was proposing to acquire shares, Mr. Lev Cherney and Mr. Anisimov. I was aware from Mr. Patarkatsishvili that Mr. Anisimov, in particular, was eager to get out of the industry as he was tired of the violence and extortion. At some of the early meetings, I was not full of enthusiasm for this deal, still having concerns about gangster elements that continued to plague the industry. Mr. Patarkatsishvili was very keen that the deal should proceed. At the negotiation meetings, Mr. Patarkatsishvili did not discuss price or other terms; his physical presence, however, reinforced that I had a strong *krysha* and was someone to be taken very seriously. I do not remember anyone asking me if Mr. Berezovsky was involved in the purchase of aluminium assets and whether there was any kind of arrangement with him. I am well aware that many

people thought we were close because of Mr. Berezovsky's public association with Sibneft and the fact that it was widely known that I was essentially financing his lifestyle. It is possible, therefore, that the sellers might have made assumptions but none of them shared those assumptions with me.

152. During the negotiations and the period immediately afterwards, Mr. Patarkatsishvili also played an important role in resolving problems on the ground in the Krasnoyarsk region. The aluminium plants were located in what were regarded as comparatively lawless regions and various criminal groups still had a strong local influence. At my request, Mr. Patarkatsishvili went to the Krasnoyarsk region to gather support for a move to consolidate the business of KrAZ where he talked to General Alexander Lebed, the then Governor of the Krasnoyarsk region, who was one of the most powerful and influential figures in the region where the aluminium enterprises were located. It was important that General Lebed did not oppose our purchase of KrAZ since it would have been extremely difficult to establish and maintain control of the assets we purchased without local political support.

153. Mr. Patarkatsishvili put out various other 'fires' that arose from time to time during the process of consolidating control over the aluminium assets I purchased. (Once I had merged my interests with those of Mr. Deripaska, however, Mr. Patarkatsishvili's *krysha* soon became less important, as I explain further in paragraphs 177-180 below).

154. I recall that I personally met with Mr. Lev Cherney, Mr. Anisimov and Mr. Yury Schleifstein (a shareholder in the BrAZ who initially refused to sell). However, it was mainly Mr. Shvidler who handled the negotiations on my behalf. Mr. Patarkatsishvili's contribution was critical and I would not have attempted this transaction without his involvement on my side. He did not, however, engage in or negotiate the business side of the deal. It simply was not part of what I needed him for. I certainly took every opportunity to emphasise to everyone that Mr. Patarkatsishvili and I were on the same team, and it was therefore important for Mr. Patarkatsishvili to sign the 10 February agreement ('**10 February Agreement**') together with Mr. Shvidler and me (see the SPA of 10 February 2000). Mr. Patarkatsishvili

> was not an actual owner or shareholder of any kind in the business (and nor was Mr. Shvidler who also signed the agreement).

1005. Mr. Abramovich also explained in cross-examination how disputes in "the aluminium wars" had involved a confrontation between TWG on the one hand and Mr. Deripaska on the other, mainly relating to the Krasnoyarsk smelter; in this context Mr. Berezovsky had offered to help Mr. Deripaska, who, in return for his help, had made a loan to Mr. Berezovsky and provided some funding for ORT; sometime thereafter, Mr. Patarkatsishvili had supported TWG against Mr. Deripaska, and, when Mr. Berezovsky had not repaid his loan, Mr. Deripaska became extremely angry, because he considered that Mr. Berezovsky and Mr. Patarkatsishvili were playing a duplicitous game to "cheat him". I do not need to make findings about these matters, but Mr. Deripaska's dislike of both Mr. Berezovsky and Mr. Patarkatsishvili, and Mr. Abramovich's appreciation of that dislike, becomes relevant at the time of the Dorchester Hotel meeting.

The initial proposal from Mr. Bosov in late 1999

1006. Mr. Berezovsky's evidence in his witness statement was that he was approached by the manager of TWG, Mr. Bosov, who proposed that Mr. Berezovsky's "group" purchase interests in the pre-merger aluminium assets. Mr. Berezovsky sought to characterise Mr. Bosov's approach as a critical factor in the initiation of the negotiations for the sale of the aluminium assets, which would not have occurred, had it not been for his and Mr. Patarkatsishvili's previously acquired contacts in the region.

1007. Mr. Bosov gave a witness statement on behalf of Mr. Abramovich although, in the event, he was unwilling to attend the trial. His statement was served in order to deal with a specific disclosure issue raised by Mr. Berezovsky which, as matters transpired, did not arise for consideration at trial. In paragraph 8 of that statement, Mr. Bosov said that, at a meeting with Mr. Abramovich in March 2011, he told Mr. Abramovich that he was going to file a claim against Mr. Berezovsky in relation to the commission due to him, as a result of an agreement which he had reached with Mr. Patarkatsishvili in respect of his (Mr. Bosov's) involvement in the negotiations for the sale of TWG's, Mr. Anisimov's and other shareholders' KrAZ and Bratsk aluminium assets. Mr. Berezovsky contended that the fact that Mr. Bosov claimed to be entitled to the payment of the commission from Mr. Berezovsky showed that Mr. Bosov at least understood Mr. Berezovsky to be involved as a principal in the aluminium acquisition deal.

1008. However, in my judgment, Mr. Berezovsky can derive only slender assistance from such a statement; the fact that Mr. Bosov may have thought that he was entitled to sue Mr. Berezovsky in respect of an agreement which he, Mr. Bosov, had with Mr. Patarkatsishvili does not, even if proved, establish that Mr. Berezovsky (or even Mr. Patarkatsishvili) was a buyer of the pre-merger aluminium assets. The reference in paragraph 13 of Mr. Bosov's statement to a meeting with Mr. Berezovsky in April 2011, where Mr. Bosov apparently reminded Mr. Berezovsky that the promise that he would receive money for his role in setting up the aluminium deal had been confirmed at a meeting at Mr. Patarkatsishvili's office, likewise took the matter no further. Thus the statement did not suggest that Mr. Bosov's agreement was with Mr. Berezovsky;

the most that it suggested was that Mr. Bosov may have thought that Mr. Patarkatsishvili and Mr. Berezovsky were partners in the venture.

1009. During the course of cross-examination, Mr. Berezovsky developed his evidence to contend that he was the "key person" who made the sale of the aluminium assets happen, because he was the person to whom the idea of the sale was initially brought:

> "I was the key person and it's clear why: because the initial point was people came to me asking -- proposing to sell. If they will not come to me, it means that it's no deal at all in the beginning. It's in completion, I mean in negotiation later on how to structurise, how to -- and so-so, definitely Badri and Roman, they play amazing role in that. But as far as their generation of -- not generation -- as far as the beginning of everything, without being impossible to move forward, definitely I was the key person and everybody understood that.[479]
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> …
>
> But again, if you ask me why I think that I'm key person, it's not because I talk with Mr. Abramovich or with Mr. Badri. It's not so. I key person just because people who propose that, they propose it to me; not even to Badri, I would like to say. Because they understood that we -- they did not maybe believe so much like we believe that we'll create political stability in Russia, we'll win elections"[480]

1010. This statement was inconsistent with his earlier witness statement that "it was Badri who was the deal-maker" and who led the negotiations, and inconsistent with Mr. Berezovsky's oral evidence given earlier the same day that by the time he (Mr. Berezovsky) allegedly mentioned Mr. Bosov's approach to Mr. Patarkatsishvili, Mr. Patarkatsishvili had already been approached by Mr. Anisimov and discussions were already underway.

1011. Even on the assumption that Mr. Bosov brought a proposal to Mr. Berezovsky, as Mr. Berezovsky alleges, the role of the Bosov proposal in the initiation of the sale of the aluminium assets was of limited importance. I do not regard it as supporting his claim to an interest in the pre-merger aluminium assets. The evidence of Mr. Abramovich and Mr. Shvidler, which I accept, was that by late 1999 Mr. Abramovich already knew many of the major players in the aluminium industry and had been approached by a number of people about becoming involved in it[481]. One of those persons who approached Mr. Abramovich was Mr. Patarkatsishvili, who proposed that Mr. Abramovich should buy out the aluminium assets of the leading players in the industry, TWG (led by Mr. Lev Cherney, the Reuben brothers and managed by Mr. Bosov) and Mr. Vasily Anisimov. Mr. Anisimov also described in his evidence how, at Mr. Patarkatsishvili's suggestion, he had got in touch with

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479 See Day 9, page 160.

480 See Day 9, page 160-161.

481 Shvidler 3rd witness statement, paragraph 152.

Mr. Abramovich to discuss the possibility of a sale of his aluminium interests. Mr. Patarkatsishvili offered to act as an intermediary. Mr. Abramovich did not meet Mr. Berezovsky or agree anything with him. Mr. Berezovsky was not involved at all. Thereafter, Mr. Patarkatsishvili worked with Mr. Abramovich and Mr. Shvidler on a plan for acquiring the assets. It may well be, as Mr. Abramovich described, that Mr. Bosov was instrumental in securing the sale of the Bratsk assets as part of the overall deal, but he was certainly not the principal introducer so far as Mr. Abramovich was concerned. That was Mr. Patarkatsishvili.

1012. Mr. Shvidler's third witness statement also provided an instructive account of the background to, and origin of the negotiations, and Mr. Patarkatsishvili's role. I accept his evidence.

> "Aluminium Assets Acquisition
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> 151. In contrast to the Russian oil industry at the time, the Russian aluminium industry in the mid- to late-1990s was still extremely fragmented. It resembled an organised crime racket, with in-fighting and interventions by local officials. The management of the aluminium assets was concentrated locally which meant that the managers in the plants and factories had control of cash but were in turn vulnerable to having that cash taken from them by force. The conditions were favourable for gangster style crime to flourish. It is reported that the so-called "Aluminium Wars" of the late 1990s claimed over 100 lives. This might sound like journalist exaggeration but there genuinely was a lot of danger associated with this industry. The amounts of money involved were substantial. Eventually the killing spread to the streets of Moscow and therefore became a matter of greater public awareness.
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> 152. I recall that towards the end of 1999, Mr. Lev Cherney approached us several times directly to see if we might be interested in getting involved in the industry (we were not). I then heard from Mr. Abramovich that Mr. Cherney had also approached Mr. Patarkatsishvili wanting to make some kind of a deal with respect to several aluminium entities located in Russia because of a squeeze by other competitors in the market. The plants Mr. Cherney had an interest in were being starved of raw materials. There was a particular problem at Krasnoyarsk in the latter part of 1999; the company was on the verge of bankruptcy and about to stop production. I believe that Mr. Vasiliy Anisimov also approached Mr. Patarkatsishvili. It seemed that they all felt that they were in danger of losing their assets altogether and wanted someone to buy them first, while they still had something of value to sell.

153. I believe that Mr. Patarkatsishvili then approached Mr. Abramovich to see if he would be interested in buying the aluminium assets of Mr. Lev Cherney, the Reuben brothers and Mr. Anisimov. Mr. Abramovich was initially reluctant to get involved with the aluminium industry at all, but he and I discussed it at some length. We thought that, as we had directly experienced in the oil industry, there was scope in the aluminium industry for vertical integration in order to achieve greater efficiency and thereby extract the full value from the enterprises. However, the risk was huge - both that the assets would turn out to be worthless and that we too would be victims of gangsterism.

154. In terms of addressing the gangsterism element, Mr. Patarkatsishvili's role was critical. He had been in discussions with people in the industry for a while. He knew the main players and they knew him. We all believed that he was uniquely placed to provide enough protection (*krysha*) given his reputation in the market at that time. Based on my discussions with him at the time, I do not believe that Mr. Abramovich would have gone into the aluminium industry at all without Mr. Patarkatsishvili's protection. Mr. Patarkatsishvili in turn wanted to be seen as having had an important role but he also knew that without Mr. Abramovich, there was no deal. At the time, Mr. Abramovich was one of the few people prepared to pay for shares in these aluminium assets and who people trusted to 'play it straight' and do things properly.

155. After serious internal discussions, Mr. Abramovich decided to go ahead with negotiations which I undertook on his behalf. I negotiated mainly with Mr. Cherney (he was acting on his own behalf and on behalf of the Reuben brothers) and also Mr. Anisimov. Mr. Bosov - one of Mr. Cherney's associates - was sometimes at the meetings. …"

1013. Nor am I persuaded that Mr. Berezovsky's previous contacts with General Lebed, the provincial governor, were in any way contributory to, or significant in, the acquisition of the pre-merger aluminium assets. I am also sceptical that a single visit by Mr. Berezovsky to Krasnoyarsk during the course of 1999 would have resulted in what Mr. Berezovsky described as the cultivation of "key contacts in the Russian aluminium sector". I accept that Mr. Berezovsky may well have had contacts in the aluminium industry - but in my judgment the key contacts are likely to have been those between Mr. Patarkatsishvili and businessmen in the aluminium sector.

1014. On his own evidence Mr. Berezovsky's meetings with General Lebed had had nothing to do with the sale of the aluminium assets. According to Mr. Berezovsky:-

i) he had close connections with General Lebed and had supported him in his election campaign for the position of Governor of the Krasnoyarsk region in 1998; and

ii) he had met with General Lebed early in 1999 to mediate ongoing aluminium disputes in the region.

1015. However, whilst I accept that evidence, it was not Mr. Berezovsky's case that he spoke to (or otherwise influenced) General Lebed in relation to the sale of the aluminium assets, whether in late 1999, when negotiations were ongoing, or at all. There was no evidence to suggest that Mr. Berezovsky had been instrumental in late 1999 in securing General Lebed's support for the deal. According to Mr. Abramovich, it was Mr. Patarkatsishvili who travelled to Krasnoyarsk to secure General Lebed's support. Moreover although General Lebed's co-operation was very important in order to ensure that operations at the plants ran smoothly at the local level, his authorisation was not necessary for the sale itself. As Mr. Abramovich had himself described in his third witness statement, it was important that General Lebed did not oppose the purchase of the KrAZ assets, since it would have been extremely difficult to establish and maintain control of those assets without local political support. In cross-examination, Mr. Abramovich described the situation as follows :

> "General Lebed had nothing to do with the acquisition of assets and who acquired them and he actually did not say whether he was for or against that; that's not part of his authority. It's difficult for you to -- for me to explain, but local authorities had nothing to do with share acquisition process. However, the situation prevailing, prevailing with the workforce, with the trade unions, when everybody came out into the streets and started protesting, that really was very relevant to the local authority and he was very keen for this matter to be resolved"

1016. Evidence to similar effect was given by Mr. Mark Buzuk, an adviser to Mr. Anisimov, who represented the KrAZ sellers in the negotiation of the sale of the pre-merger aluminium assets in 2000. I accept Mr. Abramovich's and Mr. Buzuk's evidence in this respect.

1017. Moreover, in a press interview given on 23 February 2000 General Lebed was reported in the following terms:

> "In conclusion, the governor refuted the information that Boris Berezovsky is going to buy some of the shares of the Krasnoyarsk companies. 'In this transaction Boris Berezovsky is a middleman. The main purchaser is Roman Abramovich', Alexander Lebed declared."

1018. Mr. Berezovsky sought, in this context and also in order to explain his absence as a designated party to the Master Agreement, to suggest that his political position required him to be discreet about his interest, which was why he was not referred to as

a purchaser by General Lebed, and why he was not expressly named as a party in any of the acquisition documentation. He also attempted to suggest that Mr. Abramovich had requested that his and Mr. Patarkatsishvili's interest in the aluminium assets should "not be made visible" because of his political position. But the reasons which he put forward to support these assertions I found specious. As Mr. Berezovsky himself acknowledged, he was almost at the height of his political power and influence in late 1999;[482] Mr. Putin's election victory in March 2000 was generally regarded as inevitable, as Professor Fortescue, Mr. Berezovsky's own expert (and, indeed, on occasions Mr. Berezovsky himself) described. Mr. Berezovsky's protestations about "invisibility" were also belied by an interview which he gave to *Vedomosti* in March 2000 when he publicly suggested that he was involved in the acquisition of the pre-merger aluminium assets. Although Mr. Berezovsky attempted to suggest that President Putin's election had made all the difference to his ability publicly to associate himself with the acquisition, there was no satisfactory evidential basis for that assertion.

1019. On the evidence, therefore, I find that, even if Mr. Bosov had initially brought a proposal to Mr. Berezovsky, rather than to Mr. Patarkatsishvili, its role in the initiation of the sale negotiations for the KrAZ assets was minimal. It did not support or justify Mr. Berezovsky's claim to an entitlement to a share in the pre-merger aluminium assets.

The presentation of Mr. Bosov's proposal to Mr. Abramovich

1020. Mr. Berezovsky's evidence was that it was not just Mr. Patarkatsishvili, but also he, Mr. Berezovsky, who was involved in bringing Mr. Bosov's proposal to Mr. Abramovich and persuading Mr. Abramovich to proceed with the transaction. Mr. Abramovich's evidence on the other hand was very clear that it was just Mr. Patarkatsishvili who brought the proposal to him and that Mr. Berezovsky had nothing to do with the acquisition.

1021. It was suggested in Mr. Berezovsky's written closing submissions[483] that it was not necessary for the court to resolve what was referred to as:

> "… a tangential dispute about whether or not Mr. Berezovsky was present at the meeting when the Bosov proposal was originally raised with Mr. Abramovich";

that the additional evidence relied upon, and the presence of Mr. Berezovsky at the Dorchester Hotel meeting, made it clear that he was involved with the proposal. It was further submitted that, nonetheless:

> "… given the fact that Mr. Berezovsky and Mr. Patarkatsishvili tended to operate in partnership in all the other business transactions they engaged in (LogoVAZ; ORT; Sibneft), and the fact that both Mr. Berezovsky and Mr. Patarkatsishvili had been involved the previous year in Krasnoyarsk, the strong

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482 Berezovsky 4th witness statement, paragraph 258; Berezovsky Day 9 pages 12-14.

483 See paragraph 1094.

likelihood is that Mr. Berezovsky was also involved in the original proposal alongside Mr. Patarkatsishvili."

1022. But the weakness of this submission was that Mr. Abramovich's evidence, supported by that of Mr. Shvidler, was that Mr. Berezovsky had no involvement whatsoever in the discussions between Mr. Abramovich, Mr. Shvidler and Mr. Patarkatsishvili in relation to the proposal for the acquisition of the KrAZ and Bratsk assets, or in relation to the implementation of such proposal. Whether or not there was any sort of bilateral partnership between Mr. Berezovsky and Mr. Patarkatsishvili in relation to the aluminium assets is not a matter which Mr. Berezovsky is entitled to raise as against Mr. Abramovich in this action. Accordingly I make no finding in relation to any such bilateral partnership allegation.

1023. But for the purposes of the Commercial Court action and the Overlap Issues, I accept Mr. Abramovich's and Mr. Shvidler's evidence that Mr. Berezovsky played no part in presenting Mr. Bosov's proposals to Mr. Abramovich or in the subsequent discussions about the transaction as between Mr. Abramovich and/or Mr. Shvidler on the one hand and Mr. Patarkatsishvili on the other.

1024. I accept their evidence that, by late 1999:

i) Mr. Abramovich already knew many of the major players in the aluminium industry and had been approached by a number of people about becoming involved in it;

ii) that one of those who approached Mr. Abramovich was Mr. Patarkatsishvili, who proposed that Mr. Abramovich should buy out the aluminium assets of the leading players in the industry, the Transworld Group (led by Mr. Lev Cherney, the Reuben brothers and managed by Mr. Bosov) and Mr. Anisimov;

iii) that Mr. Patarkatsishvili offered to act as an intermediary;

iv) that, prior to the making of the Master Agreement, Mr. Abramovich did not agree anything with Mr. Berezovsky in relation to the acquisition of the pre-merger aluminium assets;

v) that Mr. Berezovsky was not involved in discussions with Mr. Abramovich and/or Mr. Shvidler in connection with the proposed acquisition; and

vi) that, thereafter, Mr. Patarkatsishvili, and Mr. Patarkatsishvili alone, worked with Mr. Abramovich and Mr. Shvidler on a plan for acquiring the assets.

That evidence was also supported by the evidence of Mr. Anisimov to which I have already referred above.

Mr. Berezovsky's claim that he had been "the key person who had made this deal happen" and had been involved in discussions with the sellers

1025. During the course of the trial, Mr. Berezovsky not only claimed that he had been "the key person who had made this deal happen", but also suggested that he had had significant dealings and numerous informal meetings with the sellers, in particular Mr. Lev Cherney, Mr. David Reuben and Mr. Anisimov, at which key aspects of the

acquisition had been discussed. He claimed that it was important to the sellers of both the Bratsk and the KrAZ assets that he was not only involved, but also seen to be involved. In cross-examination he put it as follows:

> "A. … people want to see me that I'm really real, I'm sorry to say that, and this was – definitely they want to understand that it's really me who is part of this deal. I think particularly it was important for David Reuben because he was foreigner, he was not so hard involved in that. But on the other hand, as I told you, that time I had good relations with Mr. Anisimov and who else who I mentioned."[484]

1026. A strange feature of this allegation was that Mr. Berezovsky had not previously suggested, prior to the start of the trial, that he had had any meetings with the sellers of the aluminium assets during the course of the negotiations for their sale. On the contrary, the picture he had painted was that it was Mr. Patarkatsishvili who was the deal-maker with regard to the purchase of the KrAZ and Bratsk assets and who had been involved in "extensive discussions" with the sellers and that he, Mr. Berezovsky, had not been involved in the detailed discussions leading up to the purchase[485]. The new allegation was also inconsistent with his pleadings in the Metalloinvest action where, despite having had every opportunity to advance such a case, he admitted in paragraph 10 of his Reply to the Defence of the Anisimov defendants:

> "(1) ...
>
> (a) It is admitted, subject to paragraph 9(1) of this Reply, that Mr. Berezovsky did not participate in the negotiations in person. As set out above, Mr. Patarkatsishvili had conduct of the negotiations on behalf of the purchasers;".

1027. Similarly, no assertion of meetings with Mr. Anisimov or with the other vendors of the KrAZ or Bratsk assets was made in any of Mr. Berezovsky's replies to requests for further information as to his allegation that Mr. Anisimov knew that Mr. Berezovsky was the purchaser of the aluminium assets.

1028. Mr. Berezovsky was unable to give any kind of satisfactory explanation for the inconsistency between his new assertion at trial that he had been heavily involved in meetings, and his previous statements in his witness statement and pleadings that he had not been so involved. The Anisimov Defendants' pleaded case (that Mr. Berezovsky was not present at any "… meetings at which the sale of the KrAZ Assets was discussed") was put to Mr. Berezovsky in cross-examination. His response was that this was "absolutely not true" as "definitely [he] had a lot of meetings with Mr. Anisimov"[486]. His attempt at an explanation came down to:

i) abrogating any responsibility for his pleadings, by blaming his lawyer, Mr. Marino, for failing to understand him; and

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484 Berezovsky, Day 9, page 162.

485 See Berezovsky 4th witness statement, paragraphs 257 and 262.

486 Berezovsky, Day 9, page 164.

ii) suggesting that in his previous statements and pleadings in the Metalloinvest action he had been using the word "meetings" in a special sense, as only referring to formal meetings with an agenda and written minutes. I did not find Mr. Berezovsky's attempt to reconcile these inconsistencies impressive.

1029. But apart from the inconsistencies of Mr. Berezovsky's own evidence, Mr. Abramovich, Mr. Shvidler, Mr. Tenenbaum and the sellers, or other parties involved in the negotiations, namely Mr. Anisimov, Mr. Buzuk and Mr. Streshinsky (who were assisting and representing Mr. Animisov), and Mr. David Reuben gave evidence at trial which directly contradicted Mr. Berezovsky's evidence that he had been involved in the negotiations or participated in meetings in relation to the proposed sale of the pre-merger aluminium assets.

1030. Thus Mr. Abramovich explained in his third witness statement:

> "158. As for Mr. Berezovsky, he had no role at all in the above process. I never discussed anything relating to the acquisition of the Aluminium Assets with him, and Mr. Berezovsky certainly did not originate the proposal to acquire these assets. If there was any agreement between Mr. Berezovsky and Mr. Patarkatsishvili relating to the Aluminium Assets, this was not something I knew about."

To similar effect was Mr. Shvidler's account in his third witness statement:

> "159. Mr. Berezovsky, however, was never in the picture. He had no involvement in the acquisition of any of the aluminium interests of Mr. Abramovich, nor was there any agreement that he would acquire any such assets either jointly, or at all, nor that anything was owed to him in respect of the role played by Mr. Patarkatsishvili."

1031. Likewise Mr. Tenenbaum also attended some parts of certain meetings between Mr. Shvidler, Mr. Lev Cherney and Mr. Bosov. Mr. Tenenbaum's unchallenged evidence was that Mr. Berezovsky was not present at any of these meetings. He said that he had never seen or heard anything which would have supported the assertion that Mr. Berezovsky played any part in the acquisition of aluminium shares or aluminium assets in 1999 and 2000. Similar evidence was given by Ms. Panchenko, who was part of the working party set up by Mr. Abramovich to assist with the deal; she gave evidence that she did not believe Mr. Berezovsky to have had any interest in it.

1032. Mr. Anisimov likewise said that he had:

> "… never seen or heard him [Mr. Berezovsky] to take part in any negotiations, he was never at any meetings, and these things were never discussed"[487].

1033. Mr. Anisimov was not in fact challenged on this statement in cross-examination. Mr. Buzuk said that he had never spoken with Mr. Berezovsky about the sale of the KrAZ assets; that, as far as he was aware, Mr. Berezovsky was not involved in the sale of the KrAZ assets; that his name was not mentioned at any time during the sale process and that neither Mr. Berezovsky, nor anyone who presented themselves as his representative, was present either at any of the meetings regarding the sale or during the preparation of the sale documentation[488]. Although both Mr. Anisimov and Mr. Buzuk confirmed in cross-examination that they did not attend all meetings, and, in particular that they were not present at the meetings relating to the negotiations for the sale of the Bratsk assets, there was no evidence (apart from Mr. Berezovsky's vague assertions that he had had meetings with the sellers) to show that Mr. Berezovsky had attended any meetings with the sellers of the Bratsk assets, such as Mr. Lev Chernoy. Mr. Streshinsky, who also worked for Mr. Anisimov and acted on his behalf in the negotiations, likewise said that, so far as he was aware, neither Mr. Berezovsky, nor any person claiming to represent Mr. Berezovsky, was involved in the purchase of the KrAZ assets. It was suggested on Mr. Berezovsky's behalf that several of these witnesses had a motive for concealing his true involvement in the deal. However, irrespective of the position of Mr. Abramovich, his staff and Mr. Anisimov, it is difficult to see why Mr. Streshinksy or Mr. Buzuk would have had the slightest interest in telling lies on the point; Mr. Buzuk ceased to be employed by Mr. Anisimov's companies in 2002; Mr. Streshinsky stopped working for Mr. Anisimov in 2009 and ceased to be a director of any of his companies earlier this year.

1034. Mr. David Reuben gave evidence on behalf of Mr. Berezovsky under a witness summons; he provided no witness statement. But Mr. Reuben's evidence did not support Mr. Berezovsky's claim that Mr. Berezovsky had been involved in the negotiations or had been present at any meetings, and contradicted his assertion that it was important to the prospective sellers that Mr. Berezovsky should be seen to be involved[489]. As was pointed out in Mr. Berezovsky's written closing submissions, Mr. David Reuben is a billionaire in his own right and had no obvious axe to grind against any participant in the present litigation. Mr. Reuben explained that it was the other sellers (Mr. Lev Cherney, Mr. Bosov and Mr. Anisimov), and not he, who had carried out the principal discussions and negotiations with Mr. Patarkatsishvili in relation to the sale of the pre-merger aluminium assets; Mr. Reuben had been in discussions with another group of potential purchasers. However he had met Mr. Patarkatsishvili on a flight to Moscow, a few months before the Master Agreement was concluded; Mr. Anisimov was also on the flight and he and Mr. Patarkatsishvili were discussing the proposed sale. From time to time Mr. Patarkatsishvili would translate for Mr. Reuben. In the course of this conversation, Mr. Reuben asked whether Mr. Deripaska was behind Mr. Patarkatsishvili in the transaction; Mr. Patarkatsishvili denied this suggestion,

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487 Day 31, page 114.

488 Buzuk 1st witness statement, paragraph 34; this evidence was not challenged.

489 I deal subsequently with Mr. Berezovsky's claim that Mr. Reuben's evidence was that he thought that Mr. Berezovsky was a purchaser of the aluminium assets.

and said effectively that he was going to do the deal with Mr. Abramovich, and, if Mr. Abramovich was not involved, "they" were not going to do the deal at all. When specifically asked the question by Mr. Gillis QC, counsel on behalf of Mr. Berezovsky, whether, in his conversations with Mr. Patarkatsishvili about who the purchasers were, any mention had been made of Mr. Berezovsky, Mr. Reuben replied "no, just -- and even if it is, I can't remember." Mr. Reuben made no mention in his evidence of any meetings with Mr. Berezovsky prior to the signing of the Master Agreement, at which the proposed sale of the aluminium assets was referred to or discussed. Mr. Reuben had apparently met Mr. Berezovsky before the contract was concluded, but he did not suggest that this had been in connection with the transaction. He had met Mr. Berezovsky once, on a subsequent occasion, after the deal had been concluded, and Mr. Berezovsky had been quoted in the press as involved in the deal. Mr. Reuben congratulated Mr. Berezovsky on "a good buy". But Mr. Reuben could not recall whether the meeting had been in London or in Moscow, saying:

> "But I can't recall because this is very significant to you in this case; to me its just another man that I met. It's not something that I would remember or was not of any importance to me."

1035. I accept the evidence of Mr. Anisimov, Mr. Streshinsky and Mr. Buzuk that no such informal meetings as alleged by Mr. Berezovsky took place. Their account was supported by the evidence of Mr. Reuben. Mr. Berezovsky's new "recollections" of these "informal meetings" were also inconsistent with statements he made to *Vedomosti* in March 2000, in which Mr. Berezovsky said that he was out of Russia during the period in which the sale was agreed. In cross-examination Mr. Berezovsky dismissed this as (yet another) example of a "hypocritical answer" that he had given to the media, but which was not true.

1036. Accordingly, I cannot accept Mr. Berezovsky's claim that he had had significant dealings and numerous informal meetings with the sellers of the Bratsk and KrAZ assets.

Mr. Berezovsky's claim that the terms of the Master Agreement showed that, although he was not expressly identified as a purchaser under the Master Agreement, he was in fact a purchaser

1037. Mr. Berezovsky asserted that the Master Agreement was inconsistent with Mr. Abramovich's case that he was the sole purchaser of the pre-merger aluminium assets. Mr. Berezovsky had two arguments under this head to demonstrate that he was an undisclosed party to the Master Agreement: first, he claimed that the description of Party 1 made it clear that Mr. Patarkatsishvili was a buyer of the aluminium assets and that, accordingly, it should be inferred that he, Mr. Berezovsky, was also a buyer; second, he claimed that, irrespective of Mr. Patarkatsishvili's designation as a buyer, the Master Agreement defined the Party 1 purchasers, not just as Mr. Abramovich, Mr. Shvidler and Mr. Patarkatsishvili, but also as including the four Offshore Companies which they represented, and which actually became the legal owners of the aluminium assets; Mr. Berezovsky asserted that he had an interest in these companies – and therefore was in fact present, within the definition of Party 1 purchasers.

1038. Apart from the fact that he was not identified in the Master Agreement as a purchaser, Mr. Berezovsky faced a number of problems about his claim that he was in reality a party to the Master Agreement. Despite his claim to have been the key person responsible for bringing them about, Mr. Berezovsky acknowledged that he never saw the Master Agreement, or the ten subsidiary asset sale agreements by which the aluminium assets were acquired, prior to the current proceedings. He was unable to recall what was discussed at the meetings which he claimed to have had with Mr. Anisimov or Mr. Reuben or any one else, and, as he accepted, was not involved in the negotiation of the documents. He had no idea what company or entity had owned the KraZ assets. He only the vaguest idea of the terms of the deal and could not remember key details, such as the price paid for the assets. Nor could he identify what obligations he assumed under the Master Agreement. He had no idea what interests were acquired pursuant to the relevant agreements, how those interests were structured, what the nature of his alleged interest or right to those interests was, nor could he identify how his claimed interest in the aluminium assets was held.

1039. But even leaving these issues aside, I cannot accept Mr. Berezovsky's arguments, deployed extensively in his oral and written closing submissions, that he was, or should be treated as, a buyer of the Bratsk and KrAZ assets, either because of the inclusion of Mr. Patarkatsishvili in the designation of Party 1, or because Mr. Berezovsky had "an interest" in the four Offshore Companies. The evidence did not establish either proposition.

Mr. Berezovsky's claim that he had interest based on the capacity in which Mr. Patarkatsishvili signed the Master Agreement

1040. Irrespective of whether the Master Agreement had, or was intended to have legal effect, the evidence showed that it was hastily made by non-lawyers and was clearly a preliminary agreement. The interests of the sellers in the various shares and businesses were only roughly defined in the recitals to the agreement. The transfer itself was effected by the underlying share purchase agreements between the selling and purchasing companies. Mr. Anisimov described it as "like a protocol of intent, that people would like to sell their assets, nothing more than that." The signatories were the people who had negotiated it (or served as the "enabler" in the case of Mr. Patarkatsishvili) and who were present at its conclusion. Mr. Shvidler's evidence was that if any of them had failed to sign the document, it would have been "bad" and given a signal to their counterparties that they were not committed to the deal.[490] Mr. Abramovich's evidence confirmed this.

1041. Mr. Abramovich's and Mr. Shvidler's evidence, which I accept (despite the extensive critique contained in Mr. Berezovsky's written closing submissions), described the respective roles of Mr. Shvidler and Mr. Patarkatsishvili and the respective capacities in which they were signing. Mr. Abramovich described how all three men were:

> "part of party 1 and each played our own specific role. As a group we were party number 1, but that doesn't mean that as a group we're all acquiring the assets."

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490 Shvidler 4th witness statement, paragraph 158; Day 26, pages 49-51.

1042. Both he and Mr. Shvidler explained that neither Mr. Shvidler nor Mr. Patarkatsishvili were acquiring any interest in the pre-aluminium assets.

1043. In cross-examination Mr. Rabinowitz suggested to Mr. Shvidler that he had signed the agreement as a principal, and had acquired an interest in the pre-merger aluminium assets. The surprising aspect of this allegation (apart from the fact that had never previously been raised by Mr. Berezovsky in his pleadings or evidence) was that it was wholly inconsistent with Mr. Berezovsky's claim that the pre-merger aluminium assets were acquired on the same basis as the alleged 1995 Agreement, to which he had never suggested that Mr. Shvidler was a party. Mr. Shvidler rejected that suggestion and explained that his name was there because he was a "representative" of the side that purchased the assets and had been the principal negotiator of the deal, and that Mr. Abramovich, Mr. Patarkatsishvili and Mr. Shvidler all "represented the purchasing side". But, as Mr. Shvidler pointed out, neither he, nor Mr. Patarkatsishvili, had paid anything for the assets or had taken any personal risks by becoming the owners of the assets.

1044. Mr. Abramovich explained in both his witness statements and in his oral evidence how Mr. Patarkatsishvili's affiliation to the deal brought with it protection; he described the essential role which Mr. Patarkatsishvili had played in the transaction and how his physical presence "reinforced that I had a strong *krysha* and was someone to be taken very seriously." Mr. Patarkatsishvili knew Mr. Lev Cherney and Mr. Anisimov well, and had an intimidatory reputation which was important in an industry rife with violence. As Mr. Abramovich said:

> "Without Badri, I would not have poked my nose in there. Every three days somebody was murdered in that business"[491].

1045. It was also clear from Mr. Abramovich's evidence that Mr. Patarkatsishvili's assistance and protection, i.e. *krysha,* was going to be needed in the future, even once the business had been acquired.

1046. I accept Mr. Abramovich's and Mr. Shvidler's evidence that, despite the critical importance of Mr. Patarkatsishvili's role in the transaction, he was only an intermediary and facilitator, and not a co-purchaser of any of the pre-merger aluminium assets.

1047. In particular, I accept that their account was supported by four Protocol agreements purportedly dated 3 February 2000 (but in fact signed later in February 2000) ("the Commission Agreements") made between Mr. Patarkatsishvili (stated to have been acting for and behalf of a service company whom he represented, defined as "the Intermediary") and the Offshore Companies acquiring the pre-merger aluminium assets. I arrive at this conclusion notwithstanding some of the bogus features of the Commission Agreements.

1048. These agreements provided for the payment of a fee totalling $115 million to a service company represented by Mr. Patarkatsishvili, in respect of, effectively, his role as facilitator and intermediary in the sale of the Bratsk and KrAZ assets to the Offshore Companies. The Commission Agreements were backdated and thus purported to

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[491] Abramovich Day 19, pages 26-27.

speak prospectively about a transaction, namely the acquisition, which had in fact already happened at the time the documents were drafted - a point that had always been accepted on behalf of Mr. Abramovich. They also contained provisions, such as clause 5[492], which were clearly fictitious in the sense that, at the time the agreement was drawn up, the final share price had been fixed and the Intermediary was therefore never at any risk of having to make an indemnifying payment. Mr. Abramovich explained that, after the Master Agreement had been signed, probably on 15 February, 2000, Mr. Patarkatsishvili had made it clear that he wanted formally to document his entitlement to a fee; he and Mr. Abramovich had a meeting in the latter's office at which they agreed the figure; and Mr. Abramovich called Ms. Panchenko in and asked her to draft and process the relevant documents. The Commission Agreements were then prepared by Ms. Panchenko, who satisfactorily explained how she had been able to reconstruct the date on which she had prepared them - 15 February 2000. She also explained that there was a need, so as to "justify a bank transfer on that commission agreement" for the Commission Agreements to demonstrate what was a genuine commercial transaction, which is why she and her subordinate, Ms. Khudyk, drafted the agreements in a way which they did, so as to achieve the objective that Mr. Patarkatsishvili could indeed be paid, into a Western bank account, the commission which was due to him. However, the fact that the Commission Agreements contained certain bogus provisions to convey to a bank that they genuinely reflected commercial transactions, did not mean that they did not do so, even if they were backdated. In my judgment, on a full analysis of the evidence, the Commission Agreements accurately recorded the nature of Mr. Patarkatsishvili's role as an intermediary and the bogus features did not establish, as Mr. Berezovsky suggested that they did, that the Commission Agreements were mis-stating the position when they provided that Mr. Patarkatsishvili (or his service companies) were entitled to be paid $115 million by way of commission in respect of his services in connection with the acquisition.

1049. It was common ground that the fee of $115 million was not paid. Mr. Abramovich's evidence, which I accept, was that, with Mr. Patarkatsishvili's consent, he did not pay the fee because they both agreed shortly afterwards that they should wait and see how the aluminium venture developed and then reassess the fee; there was still a risk that something could go wrong, and Mr. Abramovich believed that Mr. Patarkatsishvili probably thought (correctly as it turned out) that he might be able to do a lot better than $l15 million later if the business turned out to be successful. I deal with the evidence relating to the actual fee paid to Mr. Patarkatsishvili below.

1050. Mr. Patarkatsishvili presented the signed versions of the Commission Agreements to a notary in Moscow on 16 March 2000 to have them formally notarised. Mr. Abramovich's evidence was that he believed that Mr. Patarkatsishvili may have had the protocols notarised shortly after the meeting at the Dorchester Hotel on 13 March 2000, because Mr. Patarkatsishvili distrusted Mr. Deripaska and was concerned that, as and when Mr. Deripaska became a co-controller of the Offshore Companies, as a result of the proposed RusAl merger, Mr. Abramovich might be squeezed out. It was clear from Mr. Deripaska's own evidence and that of

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[492] This purported to provide "The Buyer [ie Galinton/Palmtex/Dilcor/Runciom Fort] and the Intermediary have agreed that, in case the share sellers propose worse terms and conditions than those indicated in paragraph 4.2, the Intermediary shall be obliged to indemnify the Buyer for any negative differential out of its own funds".

Mr. Abramovich that there was no love lost as between Mr. Deripaska and Mr. Patarkatsishvili. Mr. Deripaska had, apparently, taken a dim view of Mr. Patarkatsishvili's conduct in the so-called aluminium wars, because of the latter's support of the TWG group. It is also likely that Mr. Patarkatsishvili would have wanted to ensure that, if payment of his commission was indeed going to be deferred, as he had agreed with Mr. Abramovich, there was nonetheless an unimpeachable record of what had been agreed under the terms of the Commission Agreements, so that, if, and when, he returned to Mr. Abramovich to renegotiate the $115 million, there was no question but that Mr. Patarkatsishvili would receive that minimum sum. But if Mr. Patarkatsishvili in such circumstances had genuinely believed that he, or he and Mr. Berezovsky, were contractually entitled to a 50% share in the pre-merger aluminium assets, or, more to the point, a 50% participation interest in the shares of the Offshore Companies, which by then had acquired the assets, it appears highly unlikely that he would have taken steps formally to notarise a document which did not correctly record his actual (and, by 16 March 2000, because of the merger with Mr. Deripaska's interests, potentially far more valuable) share participation entitlement, but which, on the contrary, incorrectly recorded a capped fee entitlement. Moreover, Mr. Patarkatsishvili was on good terms with Mr. Abramovich at the time, and it is likewise difficult to see why, if indeed Mr. Patarkatsishvili had a share participation entitlement, he would have not asked Mr. Abramovich for some document recording that interest, however informal such a document had to be.

1051. Mr. Berezovsky's explanation for the Commission Agreements, as it emerged during the course of the trial, was to suggest that they were shams, produced for the purposes of being shown to a Western bank, Kathrein & Co, so that Mr. Patarkatsishvili could open an account into which Mr. Abramovich would be making payments for the acquisition of an aircraft which, at the Dorchester Hotel meeting in March 2000, Mr. Abramovich had agreed that Mr. Patarkatsishvili should receive by way of commission; therefore, it was said, the Commission Agreements could not be prayed in aid by Mr. Abramovich to support the role played by Mr. Patarkatsishvili in connection with the position of the pre-merger aluminium assets as merely an intermediary, as opposed to someone, who together with Mr. Berezovsky, had a 50% participation interest in the shares in the Offshore Companies. Thus Mr. Rabinowitz suggested to Mr. Abramovich in cross-examination that the Commission Agreements were produced:

> "… only after the Dorchester Hotel meeting and … knowing that that they were false agreements and that they were never intended by either side to have any legal effect at all".

Mr. Abramovich rejected that suggestion. His evidence was that the agreement to provide Mr. Patarkatsishvili with an aeroplane was only made at the Dorchester Hotel meeting in March 2000, a month or so after the Commission Agreements had been concluded on about 15 February 2000. His evidence was supported by Ms. Panchenko's evidence, both of which I accept.

1052. Mr. Berezovsky's written closing submissions contained an extensive analysis[493] of the evidence in an attempt to support his contention, which I have fully considered, although I do not rehearse it here. The documents that have survived in relation to the

[493] At paragraphs 1219 to 1254.

aircraft purchase show that Mr. Abramovich contributed $25 million to the cost of the purchase of Mr. Patarkatsishvili's plane, which was eventually bought in June/July 2000 for $23.5 million and also contributed substantial sums to the cost of its maintenance and operating costs. As Mr. Abramovich explained "$115 million could buy you four planes, I think". He also explained that the deal in relation to the aeroplane was in addition to the commission which he had agreed to pay Mr. Patarkatsishvili of $115 million. Having reviewed the evidence relied upon by Mr. Berezovsky, I reject his assertion that the Commission Agreements did not accurately reflect Mr. Patarkatsishvili's entitlement to commission in respect of his services in connection with the pre-merger aluminium assets. The evidence upon which he relied to support the suggestion that the Commission Agreements were drawn up "simply in order to allow Mr. Patarkatsishvili to open an Austrian bank account with Kathrein & Co and to receive money then used to purchase, fit out and maintain his aeroplane" and that, accordingly, the Commission Agreements were shams, was tenuous in the extreme. As Mr. Adkin, counsel for the Family defendants, realistically pointed out in the Family defendants' written closing submissions, if, as Mr. Berezovsky suggested, Mr. Patarkatsishvili required some form of documented basis for receiving money into the West, the simplest solution would have been to document his alleged interest in the aluminium business, which Mr. Berezovsky said Mr. Patarkatsishvili acquired; that could have been easily achieved, for example, by granting and documenting a participation interest, whether directly or under a trust, in 50% of the shares in the four Offshore Companies. No reason was put forward as to why such a simple course was not adopted, if indeed Mr. Berezovsky's case were correct; even if "visibility" had been a concern, which I doubt, offshore structures could easily have concealed Mr. Patarkatsishvili's and Mr. Berezovsky's interest in shares in the Offshore Companies.

1053. Accordingly I conclude that, despite his inclusion in the description of Party 1, Mr. Patarkatsishvili was not a buyer of the Bratsk and KrAZ assets and had no interest in such assets. He was a facilitator and intermediary for whose services in connection with the acquisition Mr. Abramovich agreed to pay a fee.

1054. Moreover, even if, contrary to my conclusion, the premise were correct, it would not follow that it should be inferred that Mr. Berezovsky was also acquiring an interest in the pre-merger aluminium assets as it were, as a co-owner with Mr. Patarkatsishvili, pursuant to an agreement with Mr. Abramovich. There was no evidence to support such a conclusion. Again, I make it clear that I am not deciding whether Mr. Berezovsky had a bilateral partnership agreement with Mr. Patarkatsishvili that would have justified such a claim, had I found that Mr. Patarkatsishvili indeed acquired an ownership interest in the Bratsk and KrAZ assets pursuant to the Master Agreement. The existence of such a bilateral partnership agreement is a matter for determination in the Chancery proceedings.

The second limb of Mr. Berezovsky's argument - that it should be inferred from the description of Party 1 in the Master Agreement that Mr. Berezovsky was also acquiring an interest in the pre-merger aluminium assets

1055. Mr. Berezovsky's argument under this head, as formulated in paragraph 1114 of his written closing submissions was that:

"… although he [Mr. Berezovsky] was not expressly identified as one of the purchasers on the face of the 10 February 2000 Master Agreement, the definition of Party 1 was carefully not limited to Mr. Abramovich, Mr. Shvidler and Mr. Patarkatsishvili, but extended to and included the 4 offshore companies which they purported to represent (namely Runicom Fort, Galinton, Dilcor, and Palmtex). Mr. Berezovsky's case is that he was one of the owners of those 4 offshore companies, and therefore also one of the purchasers.[519]

[519] See Answer 27 of the Response to Part 18 Request for Further Information dated 24 March 2011." [Emphasis supplied]

1056. Request 27 and Answer 27 were in the following terms:

"27. In relation to any such assets that it is alleged were 'beneficially owned' by Mr. Berezovsky please identify under which law and by virtue of what rights such beneficial ownership interests are alleged to have arisen."

"27. The system of law most closely connected to the acquisition of the aluminium assets was English law (as the law expressly chosen in all the purchase contracts entered into by the Offshore Companies). Mr. Berezovsky's rights or interests in the Offshore Companies arose (under Russian and/or English law):

(1) Pursuant to the 1995 Agreement;

…

(3) By reason of the fact that payment for these assets came from Mr. Berezovsky's, Mr. Patarkatsishvili's and Mr. Abramovich's share of profits derived from their interest in Sibneft.

Those rights or interests in the Offshore Companies are evidenced in writing by (i) the fact that pursuant to the Share Purchase and Sale Agreement dated 15th March 2000, and the Amended and Restated Share Purchase and Sale Agreement dated 15th May 2000, in each case between Runicom Limited and GSA (Cyprus) Limited and in each case governed by English law, Runicom Limited represented that others apart from Runicom Limited (described variously as the Other Selling Shareholders" and the "P1 Shareholders") were legally and/or beneficially interested in the Offshore

> Companies; and/or (ii) the fact that the 10 February 2000 agreement by which the aluminium assets were acquired identifies Mr. Patarkatsishvili (along with Mr. Abramovich and Mr. Shvidler) as one of the purchasers of the assets."

1057. Thus Mr. Berezovsky's pleaded claim to support the contention that "he was one of the owners of those four offshore companies", as set out in Answer 27 above, appeared to be wholly reliant upon:

i) the assertion that payment for the pre-merger aluminium assets had derived from Sibneft profits (an allegation that was subsequently withdrawn, in the light of the clear evidence that the acquisition had been financed by a bank loan and funds from Mr. Abramovich's Trading Companies, and subsequently recouped out of the proceeds of an equalisation payment made by Mr. Deripaska at the time of the merger);

ii) the inclusion of Mr. Patarkatsishvili in the description of "Party 1" in the Master Agreement (an argument which I have held fails); and

iii) the terms of the subsequent Share Purchase and Sale Agreement dated 15 March 2000, and the Amended and Restated Share Purchase and Sale Agreement of 15 May 2000, to which I refer later in this judgment.

But none of these provided any evidentiary basis for ownership of an interest in the Offshore Companies; the argument at i), if factually supported, at most could have provided a claim against the relevant company as a beneficiary under a resulting or constructive trust of the acquired aluminium assets; and it was difficult to see how the assertions at ii) and iii), even if well founded, which I hold they were not, supported some sort of beneficial interest held by Mr. Berezovsky in the Offshore Companies.

1058. Mr. Berezovsky himself, as I have already described, was not able to give any evidence as to how his alleged interests in the Offshore Companies were held, arose or were structured. His claim as formulated in Answer 27, quoted above, was inherently circular and vague. Mr. Shvidler and Ms. Khudyk gave evidence in their witness statements to the effect that the Offshore Companies were offshore companies of Mr. Abramovich and were not challenged on this aspect. For example, it was not suggested to either of them that Mr. Abramovich had told them, or that there was any other basis upon which they should have known, that Mr. Berezovsky had some sort of beneficial interest in the shares in the Offshore Companies. Mr. Abramovich was cross-examined on the basis that the Offshore Companies (for example, Palmtex) were his companies, but it was not suggested to him either that he had ever told Mr. Berezovsky and Mr. Patarkatsishvili that he, or anyone else, was holding 50% of shares in the Offshore Companies for their benefit, or that he had any obligation to do so. Mr. Tenenbaum gave evidence that the shares in the Offshore Companies were bearer shares, and, although he was cross-examined about the terms of the subsequent Share Purchase and Sale Agreement dated 15 March 2000, and the Amended and Restated Share Purchase and Sale Agreement of 15 May 2000, it was not suggested to him that any of those bearer shares were held, or should have been held, by, or on trust for, Mr. Berezovsky and Mr. Patarkatsishvili or that he knew that they were, or

should have been, so held. At page 37 of Mr. Berezovsky's First Schedule, with reference to 407 of Mr. Abramovich's written closing submissions, the statement is made that:

> "The Master Contract defined the Party 1 purchasers, not just as Mr. Abramovich, Mr. Shvidler and Mr. Patarkatsishvili – but also the 4 offshore companies which they represented, and which actually became the legal owners of the aluminium assets. Mr. Berezovsky has always asserted that he had an interest in these companies – and therefore was in fact present, within the definition of Party 1 purchasers. Mr. Abramovich has not been able to refute that, by showing that the 4 offshore companies belonged solely to him."

1059. But the onus was not on Mr. Abramovich to refute Mr. Berezovsky's assertion that the latter "… was one of the owners of those 4 offshore companies, and therefore also one of the purchasers" of the pre-merger aluminium assets[494]; the onus was on Mr. Berezovsky to establish that he was such an owner whether legally, as holder of the bearer shares, or beneficially under the terms of a trust, declared, for example, by the nominee holders of the shares. He failed to do either. Thus the claim by Mr. Berezovsky to be the beneficial owner of the shares in the Offshore Companies, apart from being inconsistent with his pleaded case at paragraphs C59 - C59B (in which he claimed that "… the aluminium assets [were] beneficially owned by Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich"), provided him with no additional route to becoming a party to the Master Agreement. The reality was that any claim to be entitled to a beneficial interest in 50% of the shares of the Offshore Companies depended on the enforcement of his alleged rights under the alleged 1999 Agreement.

The assertion that Mr. Berezovsky's interests in the pre-aluminium merger assets needed to be hidden

1060. I have already dealt with this claim to a certain extent. It was not borne out by the evidence. The principal reason proffered by Mr. Berezovsky as to why his interest in the aluminium assets needed to be concealed, and why he was not to be named a party to the Master Agreement, was an asserted concern about the risk of politically motivated attacks on his assets having regard, in particular, to the problems he is said to have experienced with Prime Minister Primakov. But, as Mr. Berezovsky accepted in evidence, by late 1999 his dispute with Mr. Primakov was long since over, Mr. Berezovsky had won that battle and was at the height of his powers. Mr. Primakov had been dismissed from his office as Prime Minister in May 1999. Mr. Berezovsky also suggested he did not sign the Master Agreement because he was a member of the Duma. No evidence was adduced to suggest that there was any legal difficulty in Mr. Berezovsky's participating in the ownership of assets because of his elected position, as opposed to the management of assets, and the suggestion was contradicted by his own evidence elsewhere and by the fact that Mr. Abramovich (also a member of the Duma at the time) signed the Master Agreement. But even if one were to accept Mr. Berezovsky's explanations as to the reason why he was not expressly referred to in the Master Agreement, they simply do not shed any light on

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494 See paragraph 1114 of Mr. Berezovsky's written closing submissions.

why no steps were taken to document his claimed ultimate ownership interest in a confidential agreement with Mr. Abramovich, or to structure the ownership of his interests through a confidential shareholding or other vehicle structure outside Russia. Moreover his stated desire for invisibility hardly sat well with an interview which he gave to *Vedomosti* in March 2000, in which he boasted publicly of his supposed involvement in the aluminium business.

The views of the sellers under the Master Agreement which Mr. Berezovsky said demonstrated that they thought he was indeed a purchaser of the pre-merger aluminium assets

1061. Mr. Berezovsky sought to place strong reliance on what he asserted were the views of these sellers of the pre-merger aluminium assets, and their representatives (Mr. Reuben, Mr. Bosov, Mr. Anisimov, Mr. Buzuk, Mr. Streshinsky and Mr. Lev Cherney), that he was indeed a purchaser under the terms of the Master Agreement; thus, in his written closing submissions, it was submitted that:

> "the evidence strongly suggests that this was also the understanding of all of the 4 sellers of the aluminium assets and their representatives".

1062. That was not my impression of the relevant evidence. If, and to the extent that, any of the sellers were under that impression, given what, as was apparent from their evidence, was their limited knowledge, their belief can have very little weight in an evaluation of what was actually the case.

1063. The high watermark of Mr. Reuben's evidence was that he assumed that the buyers were Sibneft shareholders or "like the Sibneft people … who were buying it" (this description also apparently including Mr. Shvidler) and he assumed that Mr. Berezovsky was one of the "Sibneft people" because his understanding was that Mr. Berezovsky "was involved" with Sibneft along with Mr. Patarkatsishvili and Mr. Abramovich[495]. Such evidence hardly supported the earlier assertion made in Mr. Berezovsky's written opening submissions that Mr. Reuben would give evidence that the sellers of the aluminium assets understood the purchasers to be "the Berezovsky group". Moreover Mr. Reuben said that Mr. Patarkatsishvili never mentioned Mr. Berezovsky's name in this connection:

> "Q And in your conversations with Mr. Patarkatsishvili about the purchasers and the purchaser not being Mr. Deripaska, was mention made of Mr. Berezovsky?
>
> A. No, just -- and even if it is, I can't remember.
>
> Q. You said earlier that reference was made to Sibneft.
>
> A. Yes.
>
> Q. Is that something that Mr. Patarkatsishvili himself said?

[495] See generally Day 15, pages 14-21.

A. No, my own partners were talking as well, they were discussing this. You see, we never specifically mentioned who one person is or one company is. So when we talk about the sale, we are talking about Badri and his partners. It was common knowledge Mr. Badri was a partner of Mr. Berezovsky; he said so, it was a known factor, so I assumed it to be that way. I have never seen any documents or papers. I was not a friend of either of them to say. I was not the enemy either. But I really had no idea what or where or how. That was how we assumed it to be[496]."

1064. But Mr. Reuben's evidence, based on assumption, was very weak support for Mr. Berezovsky's case that he was a purchaser. His other evidence, to which I have already referred, that he himself never came across Mr. Berezovsky in connection with the transaction at the time undermined Mr. Berezovsky's assertions of his own centrality to the deal.

1065. I have already addressed part of the evidence of Mr. Bosov above. I attach little weight to the self-serving press interview which he gave subsequently to *Vedomosti* in January 2008, stating that the "shares" in the aluminium factories were "sold to Abramovich and Berezovsky (signed on their behalf by Patarkatsishvili), at a time when he was seeking to claim commission from Mr. Patarkatsishvili, and possibly also from Mr. Berezovsky.

1066. Mr. Berezovsky submitted that the evidence of Mr. Anisimov, and his representatives, Mr. Buzuk and Mr. Streshinsky, to the effect that they thought both Mr. Patarkatsishvili and Mr. Shvidler were co-purchasers of the pre-aluminium assets along with Mr. Abramovich also strongly supported Mr. Berezovsky's case and undermined that of Mr. Abramovich as being inconsistent with it. I do not accept that analysis. Mr. Anisimov's evidence was that he did not know what arrangements had been reached between Mr. Abramovich and Mr. Patarkatsishvili. At the time, he assumed that Mr. Patarkatsishvili had some interest in the transaction given his involvement in the negotiations and the fact that he was named as a purchaser in the Master Agreement. But he said that he:

"… didn't quite know what kind of arrangements might have existed between Abramovich, Shvidler and Badri … and wasn't all that bothered at that time[497]."

1067. Mr. Anisimov's evidence in this respect was supported by Mr. Buzuk and Mr. Streshinsky. Their evidence was also that, based on the Master Agreement, they assumed that Mr. Patarkatsishvili acquired an interest in, or right to, the aluminium assets, but did not know what that interest was. And none of Mr. Anisimov, Mr. Streshinsky or Mr. Buzuk understood Mr. Berezovsky to have acquired an interest in the aluminium assets.

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496 Day 15 pages 17- 18.

497 Day 31, page 126.

1068. In my judgment, however, there was no inconsistency between this evidence and the evidence of Mr. Abramovich. At the time of the Master Agreement they simply did not know what the true position was, and, like Mr. Reuben, they did not need to know for the purposes of the transaction.

1069. But in his written closing submission Mr. Berezovsky invited the court to reject Mr. Anisimov's "self-serving assertion that he was not aware of Mr. Berezovsky having an interest in the aluminium assets"[498], although, somewhat confusingly, this was also accompanied, both in the written and Mr. Rabinowitz's oral closing submissions, by the suggestion that it was not necessary for the court to make a determination in relation to any issues about Mr. Anisimov's knowledge. I deal with this point further below, in the context of the second RusAl sale and Mr. Anisimov's knowledge at that time.

1070. For the purposes of Issue B1, however, I am satisfied that, at the time of the acquisition of the pre-merger assets, Mr. Anisimov did not know that Mr. Berezovsky was in any way involved in the transaction or understand that he had any interest in it. In this context Mr. Berezovsky sought to rely on:

i) a formal declaration made by Mr. Anisimov in support of his application for a visit to the United States in October 2001 in which he stated that he had sold his shares in the KrAZ assets in February 2002 to "shareholders of Sibneft";

ii) Mr. Moss' notes of the meeting in Baden-Baden with Mr. Patarkatsishvili at which Mr. Anisimov was present; and

iii) a fax dated 27 March 2007 sent to Mr. Streshinsky from Syndikus Treuhandstalt.

None of this documentation took Mr. Berezovsky's case any further nor did it establish that Mr. Anisimov had any knowledge of, or thought that, Mr. Berezovsky was involved in the acquisition of the pre-merger aluminium assets as a purchaser.

1071. Accordingly I reject Mr. Berezovsky's claim that Mr. Anisimov's evidence can be relied upon to support Mr. Berezovsky's case.

1072. A witness statement of Mr. Michael Cherney was also relied upon by Mr. Berezovsky this context, in relation to what was said to be the understanding of his brother, Mr. Lev Cherney, Mr. Reuben's partner in TWG, as to the identity of the purchasers of the Bratsk and KrAZ assets. Mr. Michael Cherney was not a seller of such assets. It contained the following passage:

> "In 1999, a number of aluminium assets owned by me, Mr. Deripaska and our partners were merged to form a new company, Sibal. Also in 1999 I had heard that Lev and [the TransWorld Group] were seeking to sell all their aluminium assets. I wanted to buy them out and I spoke to Lev at some point in 1999 to try to secure the deal. Unfortunately, my

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498 See paragraph 1138.

> business relations with my brother were not particularly good at this time and he would not give me a final answer.
>
> Later in 1999, Mr. Nekrich and another former business partner of mine, Mr. Iskander Makhmudov called me from Moscow and told me that Lev and [the TransWorld Group] had sold all their aluminium assets in Russia to Mr. Berezovsky and his partners in Sibneft. Lev also confirmed to me that this was the case. I was not pleased with this development, as I had also been interested in buying those assets." [Emphasis added].

I have already described the circumstances in which Mr. Michael Cherney declined to give evidence, even by way of video link. In the absence of cross-examination, I am not prepared to attach any weight to this untested statement which not only has a reference to the wrong date but also was wholly dependent upon what his brother had told him. But even if the statement truly reflected the belief of Mr. Lev Cherney, it would have provided minimal support to Mr. Berezovsky's case.

Various press reports relied upon by Mr. Berezovsky

1073. Mr. Berezovsky relied upon certain reports in the media at the time of the sale to support his assertion that he was, and that everybody thought he was, a purchaser of the pre-merger aluminium assets. These included three reports in *The Moscow Times*, *American Metal Market* and *Metals Week* in February 2000, in which "a spokesman" for Mr. Lev Cherney (apparently Mr. Bosov) was reported as confirming that TWG's controlling stakes in the Bratsk and KrAZ aluminium assets had been transferred to "Sibneft shareholders". In addition, the reports in *The Moscow Times* and *American Metal Market* respectively suggested that the purchasers were "companies with firm ties to tycoon Boris Berezovsky" and that the assets had been:

> "bought up … in what looks like another major power play involving two of the country's most powerful businessmen - oil tycoon Boris Berezovsky and … Roman Abramovich"

1074. In addition, Mr. Berezovsky relied upon a number of interviews given by Mr. Shvidler well after the event, in July 2000, November 2000 and May 2001, which were all subsequently published on the Sibneft website. Mr. Berezovsky sought to rely on the following emphasised passages:

i) an interview given to *Vedomosti* on 11 July 2000, in which Mr. Shvidler was asked:

> "And is your [aluminium] transaction complete?
>
> Almost. The shares have been transferred to the new owners and Russian Aluminium is practically functioning as one company. But it may take a year for the paperwork to be completed and for the transaction to be approved by various committees.
>
> …

But what funds were used to buy aluminium plants? It is rumored that Sibneft's money was used.

Sibneft's money was not used in the aluminium deal. And it is easy to determine by looking at our GAAP accounts. Our shareholders obtained funds in particular from Western investment funds." [Emphasis added]

ii) an interview given on 13 November 2000, published in *Petroleum Intelligence Weekly* in which Mr. Shvidler was asked:

"Unclear shareholding structures remain a worrying aspect of many Russian oil companies. Can you reveal who the principal shareholders are in Sibneft?

First, I would like to say that Sibneft is a separate oil company not mixed up with the aluminium interests of our shareholders. As for the list of shareholders, Roman Abramovich controls about a 40% stake, a similar amount is controlled by the company's top management, while the rest is in free float. I would also like to underline that the Chorny [sic] brothers (metals magnates who handed over their aluminium assets to Sibneft shareholders at the beginning of the year) have never been and are not represented in Sibneft" [Emphasis added]

iii) an interview given to *Vremya Novostei* on 14 May 2001 in which Mr. Shvidler was asked:

"About a year ago, Sibneft shareholders said they had acquired a group of aluminium plants. Now they have purchased GAZ and are creating the RusPromAvto company. This gives one the impression that there is some kind of financial-industrial group. Can it be described?

No it can't. Sibneft and the aluminium smelters have common shareholders, of course. But this does not change anything." [Emphasis added]"

1075. In addition to the references to Mr. Berezovsky, Mr. Rabinowitz sought to rely on the fact that Mr. Shvidler referred to "Sibneft shareholders" in the plural, and also on the fact that the public statements referred to Mr. Abramovich as only having a 40% interest in Sibneft.

1076. In my judgment this was flimsy evidential material upon which to base a case that Mr. Berezovsky was either a shareholder in Sibneft or had become a shareholder in companies which controlled the aluminium assets. As Mr. Abramovich accepted, the Russian press associated Mr. Berezovsky with Sibneft - something which, certainly before Mr. Berezovsky's departure from Russia, Mr. Abramovich found useful. But that association, as I have already explained, was also consistent with a relationship of *krysha*. And both Mr. Abramovich and Mr. Shvidler gave entirely credible explanations as to why, in the media at least, Sibneft deployed a deliberate policy of

not referring to Mr. Abramovich as the sole ultimate beneficial owner of Sibneft, but rather presenting the profile of the Sibneft shareholding structure as being 40% controlled by "Sibneft management". The reality, as Mr. Shvidler, Mr. Tenenbaum and Ms. Panchenko described, was that there was a trust structure above the registered holders of the Sibneft shares which were controlled by management, and Mr. Abramovich, or Mr. Abramovich and his family, were the sole beneficiaries of those trusts and therefore effectively in control of 80% of Sibneft. I found Mr. Abramovich's and Mr. Shvidler's explanation as to why, in the circumstances prevailing in Russia at the time, one would not wish to portray oneself as the sole owner of a majority interest in Sibneft, because of assassination or kidnap risks, entirely credible. The practice of distancing oneself from controlling ownership was one which was supported by Mr. Anisimov in his evidence.

Comments made by Mr. Patarkatsishvili prior to his death which Mr. Berezovsky alleged "consistently acknowledged to third parties that both himself and Mr. Berezovsky had acquired an interest in the aluminium assets in February 2000"[499]

1077. The briefing notes taken by Mr. Stephenson in June 2005 and by Mr. Stephenson and Mr. Lankshear in December 2005, at interviews with Mr. Patarkatsishvili, provided some evidential support for Mr. Berezovsky's case that he and Mr. Patarkatsishvili, as "core shareholders" in Sibneft, together with Mr. Abramovich, acquired the pre-merger aluminium interests. But the weight which I attach to this evidence is not great. The comments which the solicitors have noted are brief and vague and do not descend into detail. As Mr. Sumption suggested, Mr. Patarkatsishvili may have wrongly believed by this date that he had acquired such an interest, or, in my view more likely, his statements may have been simply self-serving so as to assist Mr. Berezovsky in the prosecution of his case against Mr. Abramovich. In the absence of cross-examination of Mr. Patarkatsishvili, I am not prepared to find that these statements outweigh the other evidence and, in particular, the documentary evidence. Moreover, the notes appeared to suggest that the money used to acquire the pre-merger aluminium assets were Sibneft resources; that was clearly incorrect and raised a fundamental question as to the reliability of what Mr. Patarkatsishvili was telling Mr. Berezovsky's solicitors.

1078. I can place no reliance upon the 2007 proofing materials, not only for the reasons I have already given, but also because the particular statements relied upon by Mr. Berezovsky were in fact attributed by Ms. Duncan to Mr. Berezovsky himself and not to Mr. Patarkatsishvili. In any event, the accuracy of these notes is dubious.

The third basis for Mr. Berezovsky's claim to an interest in the assets - the allegation that it was agreed with Mr. Abramovich that the cost of acquiring the Bratsk and KrAZ assets would come out of their respective profit shares in Sibneft

1079. It was common ground that neither Mr. Berezovsky nor Mr. Patarkatsishvili made any financial contribution to the cost of acquiring the pre-merger aluminium assets. The Master Agreement and the ten acquisition contracts provided for the payment by Mr. Abramovich's companies (i.e. the Offshore Companies) of $575 million, of

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499 See paragraph 1144 et seq. of Mr. Berezovsky's written closing submissions.

which $175 million was due within a week of the agreements, a further $125 million over the rest of 2000, and $275 million on 10 June 2001. Mr. Shvidler, in his sixth witness statement, set out full details of the payments required and how they were financed; in summary, $100 million was funded by a loan from MDM Bank, which contributed to the March and April instalments, and the balance was funded from Mr. Abramovich's Trading Companies and, subsequently, from Mr. Deripaska's equalisation payments. No payments were made out of Sibneft itself.

1080. It was also common ground that, as matters subsequently turned out, Mr. Abramovich recouped the whole of the $575 million which he had paid for the Bratsk and KrAZ assets from the equalisation payments subsequently made by Mr. Deripaska. But that was not something that was foreseen, and certainly not guaranteed, at the time that the assets were acquired under the terms of the Master Agreement. That was particularly so, given that:

i) the equalisation payment to be made by Mr. Deripaska was originally agreed at $400 million at a time when the Bratsk assets were not included in the merger deal;

ii) the Bratsk assets were subsequently included in the deal in April and May 2000 and the agreement with Mr. Deripaska restated on 15 May to incorporate them when the equalisation payment was increased to $575 million;

iii) that figure exactly matched what Mr. Abramovich had paid for the entirety of the pre-merger aluminium assets.

1081. Mr. Berezovsky's argument, however, was that it was irrelevant that, in the event, the transaction was self-financing and that he and Mr. Patarkatsishvili were not called upon to pay anything. In paragraph 260 of his fourth witness statement, he said that he had agreed with Mr. Abramovich (presumably in early 2000) that the purchase price of the pre-merger aluminium assets would be paid for from his and Mr. Patarkatsishvili's entitlement to Sibneft profits. In his written closing submissions[500], it was argued that the evidence showed that in 2000 it would have been perfectly feasible for Mr. Berezovsky and Mr. Patarkatsishvili to have funded their half share of the purchase price of the pre-merger aluminium assets ($287.5 million) out of the profits which they were expecting to receive during the course of 2000; which, it was said, supported Mr. Berezovsky's account of the agreement. In addition it was submitted that

> "… in order to see who contributed to the financial cost of the aluminium acquisitions, one has first to investigate who was entitled to the $575 million sum that was due to be paid and was paid by Mr. Deripaska. Mr. Berezovsky's case is that he was one of the people who was entitled to benefit from that payment, being one of the partners in the aluminium acquisition itself. Moreover, … the contemporaneous contracts make it clear that this sum was due to be apportioned between the "*Other Selling Shareholders*" and the "*Other P1 Shareholders*", rather than being payable solely to

[500] See paragraph 1549.

> Mr. Abramovich which is what one would, on his case, have expected."[501]

1082. I deal with those three arguments in turn. First, Mr. Berezovsky's assertion in his witness statement that he had agreed with Mr. Abramovich that the funding for the acquisition would come out of his and Mr. Patarkatsishvili's share of "Sibneft profits" was undermined in cross-examination[502]. His repeated restatement of the alleged agreement was not convincing; he had only the vaguest idea of what the cost of acquiring the Bratsk and KrAZ assets was; and he had no idea as to the quantum of Sibneft profits to which he was, or was prospectively, entitled in that year.

1083. Second, the evidence relating to the available "Sibneft profits" did not support Mr. Berezovsky's allegation that he had agreed with Mr. Abramovich that his and Mr. Patarkatsishvili's contribution would be funded from this source. Sibneft's own profits in 2000 could not possibly have supported such a burden; they were ultimately shown in the Consolidated Financial Statements, signed off by Arthur Andersen ZAO on 30 April 2001, at a figure of $674.845 million, of which only $50.683 million was distributed by way of dividend. Even approaching the matter on Mr. Berezovsky's case that "Sibneft profits" should be widely defined as extending to any profits made by Mr. Abramovich's Trading Companies as a result of the acquisition of Sibneft, his case was not made out. Whilst it was true that the payments received by Mr. Berezovsky and Mr. Patarkatsishvili from Mr. Abramovich's companies during the course of 2000 totalled some $490.2 million, which would, theoretically, have been sufficient to have paid for their alleged 50% share of the cost of acquiring the pre-merger aluminium assets, namely a figure of $287.5 million[503], the evidence did not support the proposition that any part of the payments actually made to Mr. Berezovsky and Mr. Patarkatsishvili were ever applied, or intended to be applied, in such a way or that they had otherwise contributed to the cost. The year 2000 was the one year in which a comprehensive spreadsheet (the FOM spreadsheet) recording payments to Mr. Berezovsky and Mr. Patarkatsishvili survived. This spreadsheet recorded no entry representing payment of their share of the cost of acquiring the pre-merger aluminium assets, or setting off their liability to contribute to the cost of such acquisition against payments that would have otherwise been due to them, or applying payments made to them for such purpose. Moreover, on the footing of Mr. Berezovsky's own case that he and Mr. Patarkatsishvili had a 50% interest in the acquisitions, $87.5 million of their contribution to the cost would have been due almost immediately, in February and March 2000, and, so far as the February instalment was concerned, prior to the receipt of any funds from Mr. Deripaska. There was no evidence to suggest that Mr. Berezovsky and Mr. Patarkatsishvili had ever paid anything, or had asked, or been asked, to pay anything. Nor (apart from Mr. Berezovsky's evidence about the original agreement with Mr. Abramovich) was there any evidence to suggest that Mr. Berezovsky or Mr. Patarkatsishvili had ever raised the question as to how or when their contribution to the acquisition costs had been, or was going to be, funded out of "Sibneft profits"; or that that point had ever been the subject matter of discussion with Mr. Abramovich. Nor was there any evidence to suggest that Mr. Berezovsky and Mr. Patarkatsishvili had been told that

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501 See paragraph 1152.

502 See in particular Day 9, pages 33-38.

503 It was not disputed that this would have been the correct figure for their alleged half share.

they need not worry about making any contribution because, in the event, the equalisation payment from Mr. Deripaska was going to fund the transaction.

1084. Third, the argument that one needed to look at who was entitled to the $575 million sum that was due to be paid by Mr. Deripaska, to ascertain who actually contributed to the financial cost of the aluminium acquisition did not logically advance the argument that the evidence supported Mr. Berezovsky's case as to his agreement with Mr. Abramovich. I deal with the terms of the "contemporaneous contracts" upon which Mr. Berezovsky relied in the next section of this judgment.

1085. Accordingly, in my judgment, the third basis put forward by Mr. Berezovsky to support his interest in the pre-acquisition aluminium assets does not assist his case.

Conclusion on Issue B1

1086. Accordingly I conclude that neither Mr. Berezovsky nor Mr. Patarkatsishvili acquired any interest in the pre-merger aluminium assets prior to the Dorchester Hotel meeting, whether by virtue of the alleged 1995 or 1999 Agreements or otherwise by virtue of any agreement with Mr. Abramovich. I conclude that, in the events which happened, Mr. Patarkatsishvili did not acquire any such interest pursuant to, or by virtue of, the Master Agreement. Subject to these points, I make no determination in relation to any claim by Mr. Berezovsky that he acquired such an interest as a result of the alleged joint venture agreement asserted by him in the main Chancery action, which is not for determination in these proceedings. However, in the Chancery proceedings, he will be bound by my conclusion that Mr. Patarkatsishvili did not acquire such interest as a result of any agreement with Mr. Abramovich prior to the Dorchester Hotel meeting or pursuant to the terms of the Master Agreement.

Section XV - Issue B2: Was it agreed at the Dorchester Hotel on 13 March 2000 that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger of those assets with Mr. Deripaska's aluminium interests?

Introduction

1087. Issue B2 of the liability issues, as I have defined them, is:

> "Issue B2: Was it agreed at the Dorchester Hotel on 13 March 2000 that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger with Mr. Deripaska's aluminium interests?"

Issue B2 addresses Issues 17 and 18 in the Agreed List of Issues, which are in the following terms:

> "17. At the Dorchester Hotel meeting, did Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska agree to pool their assets in the Russian aluminium industry?
>
> 18. Was it expressly agreed and/or understood at the Dorchester meeting:

(1) That Mr. Abramovich would, as trustee, hold half of his 50% interest on trust for Mr. Berezovsky and Mr. Patarkatsishvili, as beneficiaries; and/or

(2) That none of Mr. Deripaska, Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would sell his interest in RusAl without the agreement of the others; and/or

(3) That Mr. Abramovich would assume fiduciary obligations in relation to Mr. Berezovsky and Mr. Patarkatsishvili?"

Issue B2 also corresponds with Overlap Issue 2 and 3(a).

1088. In the light of my previous conclusion in relation to Issue B1, it might have appeared logical to have approached this issue against the background that if, as I have found, Mr. Berezovsky had no interest in the pre-aluminium assets that were contributed to the merger, it would be objectively somewhat unlikely that he would have obtained a share of the merged business without contributing either cash or assets to it. However, because Mr. Rabinowitz relied upon much of the evidence relating to Issue B2 as supporting Mr. Berezovsky's case in relation to Issue B1, I have approached the evidence relating to this issue on a notionally freestanding basis, and have, during the course of my evaluation of it, considered whether such evidence indeed supported Mr. Berezovsky's case in relation to Issue B1. I have also considered such evidence in the wider spectrum as to whether any aspect of it could be relied upon to support Mr. Berezovsky's case in relation to Sibneft and the alleged 1995 and 1996 Agreements.

Executive summary in relation to Issue B2

1089. No agreement was made at the Dorchester Hotel meeting on 13 March 2000 that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger of the pre-merger aluminium assets with Mr. Deripaska's aluminium interests. There was no agreement made at that meeting to the effect that Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich would pool the pre-merger aluminium assets acquired in February 2000 with Mr. Deripaska's aluminium interests; Mr. Berezovsky and Mr. Patarkatsishvili had no interest in the pre-merger aluminium assets and Mr. Abramovich and Mr. Deripaska had already agreed to pool such assets as between themselves. In particular, no agreement was made at that meeting by Mr. Abramovich, or by Mr. Abramovich and Mr. Deripaska, with Mr. Berezovsky and Mr. Patarkatsishvili:

i) that Mr. Abramovich would hold 50% of his interest in the merged business on trust for Mr. Berezovsky and Mr. Patarkatsishvili;

ii) that none of Mr. Abramovich, Mr. Deripaska, Mr. Berezovsky and Mr. Patarkatsishvili would sell his interest in RusAl without the prior agreement of the others; or

iii) that Mr. Abramovich would assume fiduciary obligations in relation to Mr. Berezovsky and Mr. Patarkatsishvili.

1090. The evidence relating to this issue supports my conclusion that the relationship between Mr. Berezovsky and Mr. Abramovich was based upon a protection, or *krysha*, type relationship and not on any contractually binding agreement between the two men.

The merger negotiations with Mr. Deripaska prior to the Dorchester Hotel meeting

1091. Certain aspects of the evidence relating to the events leading up to the Dorchester Hotel meeting were effectively common ground. In summary, these events were as follows (and, to the extent that they were not common ground, I find the following as facts):

i) The merger agreement, by which the pre-merger aluminium assets were combined with Mr. Deripaska's aluminium interests, originated in an encounter between Mr. Abramovich and Mr. Deripaska at the White House in Moscow in late February 2000 during which the possibility of a merger of their aluminium businesses was discussed. Negotiations were subsequently conducted in early March between Mr. Abramovich and Mr. Shvidler, on the one hand, and Mr. Deripaska and Mr. Bulygin[504] (an associate of Mr. Deripaska) on the other hand. The negotiations started late one evening in early March 2000, and continued late into the night at the Baltschug Kempinski Hotel in Moscow, and, on the following day, at Mr. Abramovich's house in Sareevo village near Moscow. They culminated in the drafting and signing on that day of a preliminary agreement ("the Preliminary Agreement") as between Mr. Abramovich of the one part (referred to as "Party 1") and Mr. Deripaska of the other part (referred to as "Party 2") to merge the respective aluminium interests of Mr. Abramovich and Mr. Deripaska in a single company, in the event RusAl. At the time a number of the aluminium assets in question were on the brink of bankruptcy and so swift agreement was required. The negotiations were also conducted in great secrecy because all the participants were concerned about the potential problem that TWG, or other competitors in the aluminium market, might attempt to cut off the merged company's access to supplies of raw materials, if the merger became known prematurely.

ii) The Preliminary Agreement set out the basic features of the proposed merger. It was drafted by Mr. Bulygin on his laptop without the input of any lawyers. It was signed by Mr. Deripaska and by Mr. Shvidler on behalf of Mr. Abramovich. The Preliminary Agreement was undated, but the evidence was that it was signed at Mr. Abramovich's house following the meetings at the Baltschug Kempinski Hotel. It provided, in summary as follows:

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504 Mr. Bulygin was in the event unable to give oral evidence owing to the poor state of his health and his need to have a medical operation. A Civil Evidence Act Notice was served in respect of his statement.

a) Mr. Deripaska would buy from Mr. Abramovich 50% of the aluminium assets identified in the agreement (which at that stage did not include the Bratsk assets) for $400 million.[505]

b) Their combined aluminium assets would be transferred into their joint ownership and management.

c) For a two year period, the joint business would comprise the production of bauxites, alumina, raw materials for primary aluminium manufacturing and primary aluminium. Any new acquisitions falling within these categories were to be made by the parties together (clause 4.6).

d) Mr. Abramovich and Mr. Deripaska would enter into a further agreement by 20 March 2000 at the latest (clause 5). In addition to the standard terms, clause 4 of the Preliminary Agreement provided that this further agreement would include certain terms specified in the Preliminary Agreement. Clause 4 provided that the following terms were to be included:

> "4. The Parties agree that in addition to the standard terms the Agreement shall by all means include the following terms:
>
> 4.1 Parties 1 and 2 warrant that, together with their partners (not including TWG or any companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of Parties 1 and 2 and are not subject to any third party rights, disputes or attachments.
>
> 4.2 Party 1 warrants its and its partners' concerted will to sign the Agreement on the terms determined herein, and shall be fully liable to Party 2 for any action (omission) by its partners associated with the performance hereof.
>
> 4.5 To jointly manage the assets owned by the Parties, the Parties shall establish joint ventures before 01.04.00 to hold the property and to conduct joint business.
>
> 4.6 The Parties hereby define the framework for the conduct of joint business for a two year perspective as comprising the production of bauxites, production of alumina, production of raw materials for primary aluminum manufacturing, and production of primary aluminum. Any new property acquisitions falling

[505] The assets identified in the Preliminary Agreement as assets being sold by Mr. Abramovich included a plant known as the Novokutnetsk plant, which Mr. Abramovich did not in fact own at the time and was not part of the pre-merger aluminium assets acquired from Mr. Anisimov and TWG.

within the interests of the joint business shall be carried out by the Parties together."

e) The parties were required within three days to appoint their respective representatives responsible for the preparation of the further agreement (clause 5).

f) By 15 March 2000 the parties would agree upon (i) a joint management team for the venture, with Mr. Abramovich proposing "CFO nominees[506]" and Mr. Deripaska proposing "CEO nominees[507]" (clause 6); and (ii) the composition of the Board of Directors of the joint venture, to be formed on a parity basis. Mr. Abramovich undertook to procure the inclusion of Mr. Deripaska's representatives on a parity basis into all relevant management bodies, including the Board of Directors (clause 7).

g) Clause 8 provided that joint business would start on 1 March 2000, i.e. immediately, and that profit sharing would also begin from that date.

h) Clause 13 contained confidentiality provisions so as to avoid alerting the market to the deal prior to the merger taking effect in order to avoid a possible risk of disruption to the supply of raw materials. It was in the following terms:

"13 The Parties undertake to hold confidential the terms of this Preliminary Agreement and any subsequent agreements. Information concerning this Preliminary Agreement and other agreements on the basis thereof may be communicated to third parties only subject to the Parties' consent."

i) Clause 14 contained an English governing law provision for the anticipated further agreement and a dispute resolution provision providing for any disputes arising thereunder to be referred to "the Court of Arbitration of the UK Chamber of Commerce and Industry, London".

1092. Shortly after the signing of the Preliminary Agreement, a working group was established to prepare the final agreement. Mr. Abramovich's side was represented by Mr. Tenenbaum and Ms. Panchenko (as well as by Mr. Andrei Osipov and Mr. Kenneth Schneider). Mr. Deripaska's side was represented by Mr. Stalbek Mishakov (at the time, Mr. Deripaska's in-house Russian lawyer), Mr. Alexander Bulygin (a business associate of Mr. Deripaska) and Mr. Paul Hauser (an external lawyer from Bryan Cave, acting for Mr. Deripaska, who remained a client at the time of trial). The first meetings took place in London between 7 and 12 March 2000. In the course of the working group's discussions, it was agreed that six offshore companies would become the initial shareholders of RusAl. Each would be owned on a 50:50 basis by Runicom Limited (subsequently replaced by Madison Equities Corp

[506] Chief Financial Officer.
[507] Chief Executive Officer.

("Madison")) and Mr. Deripaska's company, GSA (Cyprus) Limited ("GSA") (later replaced by Baufinanz Ltd ("Baufinanz")), which was itself ultimately renamed Eagle Capital Group Ltd ("Eagle")).

1093. The working group met again on 14 March 2000 and into the early hours of 15 March 2000 at Sibneft's offices in Moscow. The meeting was attended by Mr. Tenenbaum, Mr. Osipov and Mr. Schneider (for Mr. Abramovich) and by Mr. Mishakov and Mr. Hauser (for Mr. Deripaska). As points arose for determination, they were taken upstairs to Mr. Deripaska and Mr. Shvidler to reach a final agreement.

1094. These meetings of the working group culminated in a Share Purchase and Sale Agreement dated 15 March 2000 ("the 15 March SPSA") between Runicom, Mr. Abramovich's company, (as "Vendor") and GSA, Mr. Deripaska's company, (as "Purchaser"). The 15 March SPSA contained the following material terms[508]:

i) there were the following definitions:

"Companies" was defined as the four Offshore Companies which had purchased the pre-merger aluminium assets;

"Other Selling Shareholders" was defined as

> "… those other persons who together with the Vendor are the legal and beneficial owners and holders of 100 per cent of the shares (both in registered and bearer form) of the Companies as at the Completion Date"

however the "Parties" to the agreement were defined as only including Runicom and GSA;

ii) by 15 March 2000 SPSA Runicom, as Vendor, agreed to sell to GSA 50% of the shares in the Offshore Companies (i.e. Runicom Fort, Galinton, Palmtex and Dilcor, being the four companies which had purchased the pre-merger aluminium assets under the ten sale and purchase contracts dated 10 February 2000); Runicom agreed to do so "on its behalf and on behalf of the Other Selling Shareholders with full title guarantee"; the price for the sale of 50% of the shares in the Offshore Companies was $400 million (payable in instalments);

iii) GSA (Cyprus) agreed to transfer to Runicom Ltd the ownership of half of the shares in the Deripaska aluminium assets (identified in the agreement) being contributed to the deal; the $400 million payable by GSA to Runicom was, in essence, an equalisation payment to compensate for the fact that the assets contributed by Runicom were more valuable than those contributed by GSA (Cyprus);

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[508] The position in relation to the plant at Novokutnetsk referred to in the last but one footnote above had changed by this time. This asset appeared in the 15 March SPSA agreement (at clauses 1.1, 2.7 and Schedule 2, Part 1) as an asset to be acquired by Mr. Abramovich within three months of completion.

iv) the agreement contained various representations, warranties and other provisions addressing the position of the Other Selling Shareholders; by way of example, I refer to the following:

> "5.1 The Vendor shall procure that neither it, the Other Selling Shareholders, nor any of their respective transferees, successors or assigns, shall transfer to any third person any of the shares in the Companies which such entity owns or controls for a period of two years from the Completion Date without obtaining the prior, written consent of the Purchaser.
>
> …
>
> 6.1 The Vendor represents and warrants to the Purchaser that as at the Completion Date:
>
> 6.1.1 the Vendor and Other Selling Shareholders are together the legal and beneficial owners of 100 per cent of the shares of the Companies, which shares are owned free from all encumbrances, charges and liens;
>
> …
>
> 6.1.3 the Vendor has the power and authority to act in the name of and to represent the Other Selling Shareholders in respect of the sale of the Shares, and to receive the Transfer Price on their behalf;
>
> …
>
> 6.1.5 neither the Vendor nor any of the Other Selling Shareholders shall have any claims of any nature against the Companies whatsoever, including but not limited to any actual or contingent charges, encumbrances, pledges or liens;"

v) Clause 8 contained a provision referring any disputes under the agreement to the London Court of International Arbitration, with a seat in London; it also contained an English governing law provision;

vi) clause 18 provided:

> "**Rights of Third Parties**
>
> Except as expressly provided in this Agreement, nothing in this Agreement will create or confer any rights or other benefits on or in favour of any person who is not a party to this Agreement whether pursuant to the Contracts (Rights of Third Parties) Act

> 1999 or otherwise. For [the] purposes hereof, the Parties hereby expressly provide that the Other Selling Shareholders are to be considered for all purposes 'intended third party beneficiaries' to this Agreement with respect to the obligations of the Purchaser and, as such, shall be entitled (without limitation) to damages in the event of any breach by the Purchaser of its obligations pursuant hereto; provided, however, that in the event of any disputes hereunder any claims of the Other Selling Shareholders for damages from the Purchaser shall be made and enforced by the Vendor, acting as agent and/or attorney for such purposes on behalf of the Other Selling Shareholders."

vii) Runicom and GSA agreed to employ all reasonable endeavours to negotiate in good faith and enter into a shareholders' agreement regulating the management and business of the Offshore Companies by the Transfer Date (a date not later than 30 days after the Completion Date), upon which the shares in those companies were to be transferred to GSA; and

viii) by virtue of clause 4.5 and schedule II part 3, the Bratsk assets were expressly excluded from the merger deal.

1095. On 15 May 2000, the 15 March SPSA was amended and restated to reflect changes in the deal since 15 March ("the 15 May Restated SPSA"). The main changes were the addition of the Bratsk assets (which had been excluded from the previous agreements) to the assets to be contributed by the Runicom side and the contribution of the Sayansky plant from Mr. Deripaska's side[509], the resultant revaluation of the equalisation payment (which involved a calculation of the value attributed to the Bratsk assets, less the value attributed to Sayansky plant) gave rise to an increase in the equalisation payment to be paid to Runicom of $175 million, bringing the total sum up to $575 million.

1096. RusAl itself was ultimately registered in Moscow in December 2000. Its initial shareholders were six companies registered in the BVI, including two of the four Offshore Companies who had been purchasers of the pre-merger aluminium assets under the ten contracts dated 10 February 2000; these were: Galinton, Dilcor (two of the Offshore Companies), David Worldwide Corp., Kadex Metals Ltd., Valeford Trading Ltd. and Foreshore Ventures Ltd. ("the Initial RusAl Shareholders"). It was agreed between Mr. Abramovich and Mr. Deripaska that the shares of the Initial RusAl Shareholders (which were in bearer form) would be distributed 50/50 as between Runicom (although subsequently ownership was exercised through Madison) and Mr. Deripaska's company GSA, and that the share certificates would be kept by the authorised representatives of Mr. Abramovich and Mr. Deripaska.

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[509] Another change was in relation to the plant at Novokutnetsk referred to in the last footnote. This asset had appeared in the 15 March SPSA as an asset to be acquired by Mr. Abramovich within three months of completion, but in the 15 May Restated SPSA it appeared as an asset to be acquired jointly (at clauses 5.2 and Schedule 2, Part 1).

Mr. Berezovsky's case in relation to Issue B2

1097. Mr. Berezovsky claimed that, very shortly after the pre-merger aluminum assets were acquired, Mr. Abramovich informed him and Mr. Patarkatsishvili that Mr. Deripaska and his Sibal group were interested in integrating their respective aluminium assets into a new company; and that Mr. Abramovich said that it was preferable not to compete with Mr. Deripaska, who had many years of experience in the aluminium sector, but rather to work with him in partnership. Mr. Berezovsky said that he and Mr. Patarkatsishvili agreed that Mr. Abramovich should negotiate with Mr. Deripaska to see what merger terms might be available. He further said that, in the course of several private discussions between the three men in Moscow about a week, or perhaps a bit more, before the Dorchester Hotel meeting on 13 March 2000, Mr. Patarkatsishvili, Mr. Abramovich and he discussed the principal terms on which they would be prepared to merge; and that they agreed that:

i) the "confirmation" of their obligations under the alleged 1995 and 1996 Agreements;

ii) no one should be able to "leave the business" (i.e. sell his interests in the new entity) without the consent of the other parties to the agreement;

iii) if a merger could be agreed, Mr. Abramovich would hold their shares for the three of them on trust; and

iv) that the agreements they made regarding their aluminium assets, including the trust, would be subject to English law. Mr. Berezovsky said that a meeting was arranged a week or two in advance to take place at the Dorchester Hotel in London on 13 or 14 March 2000 between the principals to the merger deal (i.e. himself, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska) "to finalise the key details of the deal to be made"[510].

1098. Mr. Berezovsky's case was that he intervened at the decisive point of the merger negotiations, by presiding over the meeting at the Dorchester Hotel on the afternoon of 13 March 2000, between himself, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska which marked the point when the final agreement was reached which was subsequently embodied in the 15 March SPSA executed two days later. His evidence was that Mr. Patarkatsishvili led the negotiations, but "everybody understood that I am key person, not anybody more"[511]. He claimed that the merger was indeed agreed at this meeting, and that, in particular, it was agreed that no party could sell their interest without the agreement of the others, and that the arrangements, both internally as between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili, and their agreement with Mr. Deripaska, would be governed by "British law"[512].

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510 Berezovsky Day 9, pages 62-65.

511 Berezovsky Day 9, page 61.

512 See paragraphs 264 -284 of Mr. Berezovsky's fourth witness statement. He was also extensively cross-examined on the issue.

Mr. Abramovich's case in relation to issue B2

1099. Mr. Abramovich denied that Mr. Berezovsky had any involvement in the merger of the pre-merger aluminium assets with Mr. Deripaska's aluminium interests. He denied that he had any discussions with Mr. Berezovsky about the proposed merger prior to the Dorchester Hotel meeting. He said that Mr. Patarkatsishvili was also not party to the merger discussions, but that he informed Mr. Patarkatsishvili of the merger agreement after he returned to Moscow from London on 12 March 2000. He claimed that the meeting at the Dorchester Hotel was arranged at the last moment, at Mr. Berezovsky's insistence, Mr. Berezovsky having been told about the merger by Mr. Patarkatsishvili and having summoned Mr. Abramovich so that Mr. Berezovsky could be told about it directly.

Analysis of the direct evidence relating to Mr. Berezovsky's alleged involvement in the merger and the Dorchester Hotel meeting itself

1100. I address first the direct evidence relating to Mr. Berezovsky's alleged involvement in the merger and to the Dorchester Hotel meeting itself. I then turn to deal with the various aspects of circumstantial and collateral evidence relied upon by him to support his case. In coming to my conclusion in relation to the direct evidence, I have also taken into account the points made on Mr. Berezovsky's behalf in relation to the circumstantial evidence.

The events leading up to the Dorchester Hotel meeting

1101. My findings of fact in relation to the direct evidence relating to the events leading up to the Dorchester Hotel meeting are as follows:

i) Mr. Berezovsky had no involvement in any of the merger negotiations, as between Mr. Abramovich and Mr. Deripaska, including those which led to the Preliminary Agreement and those of the working party set up under it; thus he was not expressly named as a party to the Preliminary Agreement, or any of the subsequent agreements by which the merger was effected, namely the 15 March SPSA and the Restated 15 May SPSA; he had no documented interest in the merged business, and did not seek to obtain any documentary record of his interest; and he had no involvement in the formation of RusAl or the operation of any part of the merged business.

ii) Between 7 and 12 March 2000 Mr. Abramovich and Mr. Deripaska and their respective teams were in London where they met on several occasions to conduct the merger negotiations. They also resolved the issue of securing arrangements for the supply of raw materials to the aluminium plants, which had been the concern which the confidentiality provisions of the Preliminary Agreement had been intended to address. By this time, the merger had already started, from a practical point of view, to have been put into effect and the aluminium operations had already started to be combined.

iii) Contrary to Mr. Berezovsky's evidence, there were no private discussions or meetings between him, Mr. Patarkatsishvili and Mr. Abramovich in Moscow in the week or so before the Dorchester Hotel meeting in relation to the proposed merger and no discussion about its terms. The first that

Mr. Berezovsky heard about the merger was as a result of the telephone call made by Mr. Abramovich to Mr. Patarkatsishvili, referred to in the next paragraph.

iv) On Sunday 12 March 2000[513], Mr. Abramovich, who had returned to Moscow from London that afternoon, telephoned Mr. Patarkatsishvili and told him for the first time about the deal with Mr. Deripaska. Mr. Abramovich thought it necessary and appropriate to do so, notwithstanding the fact that the merger was not going to be announced until later, because Mr. Abramovich had an outstanding financial obligation to Mr. Patarkatsishvili in relation to the fees for the work which the latter had done in connection with the acquisition of the pre-merger aluminium assets. Mr. Abramovich thought it would not be appropriate to Mr. Patarkatsishvili to hear about the merger from the newspapers. The confidentiality concerns, which had related to the possibility of attempts by competitors such as TGW to disrupt supplies of raw material to the aluminium plants, had been resolved by this stage. Mr. Abramovich's explanation as to why he informed Mr. Patarkatsishvili was entirely credible; I do not deduce from the fact that he did so, without the prior consent of Mr. Deripaska, that Mr. Patarkatsishvili was, or was regarded by Mr. Abramovich as being, a "partner" and therefore not a "third party" within the meaning of clause 13 of the Preliminary Agreement.

v) Mr. Patarkatsishvili's immediate response was that he was not happy about the proposed merger and warned Mr. Abramovich about Mr. Deripaska. Shortly after the discussion, Mr. Patarkatsishvili rang Mr. Abramovich back and told him that Mr. Berezovsky would like to meet with him straight away, because, or so Mr. Abramovich understood, Mr. Berezovsky wanted to hear from him directly about the merger. Mr. Berezovsky was in London because Monday 13 March was the first day of the House of Lords' hearing of his case against *Forbes Magazine.* So Mr. Abramovich arranged to fly back to London (from where he had just come) on the next day, 13 March 2000, with Mr. Deripaska and Mr. Shvidler, in order to meet Mr. Berezovsky and Mr. Patarkatsishvili.

vi) Contrary to Mr. Berezovsky's case that, approximately a week or ten days before the Dorchester Hotel meeting, he, Mr. Patarkatsishvili and Mr. Abramovich had agreed <u>in advance</u> to set up a meeting <u>in London</u>[514], as a summit of principals to agree the terms of the merger, it was clear from the evidence (including flight and travel records) that the meeting was arranged, on 12 March, as a result of the last-minute "summons" from Mr. Berezovsky. If the meeting had indeed been arranged in advance it is inconceivable that Mr. Abramovich and Mr. Shvidler, and possibly also Mr. Deripaska, would have returned to Moscow on the Sunday afternoon from London, only to have turned round and flown back again to London the next day. In a clear shift in Mr. Berezovsky's case, his written closing submissions appeared to accept the fact that the meeting was arranged at the last moment, although a faint attempt

513 Mr. Abramovich was able to reconstruct these dates from the stamps in his passport and flight records.

514 Day 9 page 73; 4th witness statement paragraph 274.

was made to suggest that it was only the venue that was arranged at the last moment[515].

1102. Mr. Rabinowitz suggested that there was no comprehensible reason why Mr. Abramovich, Mr. Shvidler and Mr. Deripaska, facing an important week of discussions to finalise the merger agreement (which had to be signed by 20 March at the latest pursuant to clause 5 of the Preliminary Agreement), would have embarked on a day trip from Moscow to London and back, simply to inform Mr. Berezovsky directly of the terms of the merger, merely because of an alleged *krysha* relationship relating to Sibneft. He suggested that the only comprehensible raison d'être for the meeting was:

> "… because Mr. Berezovsky and Mr. Patarkatsishvili were Mr. Abramovich's partners, and he needed their consent to [the] RusAl merger. Indeed just a few days earlier, he had warranted in the Preliminary Agreement that they would consent [as per clause 4.2]."[516]

1103. This, he submitted, was only consistent with a partnership agreement between the three men, under the terms of the alleged 1995, 1996 and/or 1999 Agreements. I reject Mr. Rabinowitz's analysis of the purpose of the Dorchester Hotel meeting as set out above. It did not reflect the evidence and also was inconsistent with Mr. Berezovsky's own case and evidence that the purpose of the meeting was to discuss and finalise the terms of the merger as opposed to agreeing a deal that had already been concluded. Furthermore, if, as Mr. Rabinowitz suggested, the true purpose of the Dorchester Hotel meeting was to obtain Mr. Berezovsky's consent to the Preliminary Agreement, it was surprising that Mr. Berezovsky had no knowledge of the Preliminary Agreement and no recollection of it being produced at the Dorchester Hotel meeting, as he admitted in his evidence. Indeed he did not see the Preliminary Agreement until after the Commercial Court proceedings were instituted. His evidence demonstrated that he was entirely ignorant of its terms at the time of the Dorchester Hotel meeting.

1104. I conclude that there was every reason at the time why Mr. Abramovich would have obeyed Mr. Berezovsky's peremptory summons. The Russian presidential election had occurred on 7 March, only a few days earlier, and Mr. Berezovsky, who believed himself at that time to be an ally and patron of President Putin, and who had contributed substantially to his election campaign, was, the evidence suggested, at the zenith of his political influence. As Mr. Rabinowitz described it in his oral opening, this was a time when Mr. Berezovsky was "basking in the glory of having been involved in President Putin's election victory". I found Mr. Abramovich's explanations convincing, notwithstanding the heavy challenge to which they were subjected in cross-examination. In his oral evidence Mr. Abramovich explained that:

> "For me, meeting with Berezovsky was always important. Some of them were more important, other meetings were less important. If he had asked me to fly to New York, I would

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515 See Page 248 of Mr. Berezovsky's Second Schedule, in relation to the commentary on paragraph 1198.

516 See paragraph 11 of Mr. Berezovsky's written closing submissions.

> have probably flown to New York if I had that possibility to do so[517].
>
> …
>
> At that point in time Mr. Berezovsky was one of the most influential people in Russia and if he asked me to come and tell him about something I usually did that immediately, without delay[518]. …
>
> To me personally, there was no benefit that accrued to me personally from this. I usually complied, if I could, with [Mr. Berezovsky's] requests."[519]

1105. I did not find that explanation for the Dorchester Hotel meeting at all surprising. It was entirely consistent with the relationship between the two men at the time, under which Mr. Abramovich regarded Mr. Berezovsky, an ally of President Putin, as his influential political protector, and provider of *krysha.* At that stage in their relationship it was unlikely that Mr. Abramovich would have risked offending Mr. Berezovsky, or the loss of the elder man's future political influence. Indeed, the nature of the relationship between Mr. Berezovsky and his protégé involved Mr. Berezovsky asserting his importance precisely by way of these unforeseen commands at short notice.

1106. Mr. Abramovich's account was also supported by that of Mr. Shvidler. He explained that:

> "It will sound strange, but he [Mr. Abramovich] always did [respond to Mr. Berezovsky's requests to see him], and Badri insisted that Boris wanted to see him. … When Mr. Berezovsky heard about this merger from Mr. Patarkatsishvili, who was told by Mr. Abramovich, he decided that the meeting was necessary and Mr. Abramovich went along. Mr. Berezovsky liked to be associated with big deals and small deals as well. So what was the motive from his side? I guess that nothing"[520].

1107. Mr. Shvidler gave two other examples he could immediately recall of occasions on which Mr. Berezovsky had commanded his attendance for no obvious or useful purpose. Mr. Shvidler commented that: "that's just the kind of relationship we had"[521]. As Mr. Shvidler conceded, this looks strange to external observers but

> "it was [an] extraordinary time, [involving] extraordinary people.[522]"

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517 Abramovich, Day 19, page 122.
518 Abramovich, Day 19, page 124.
519 Abramovich, Day 19, page 133.
520 Shvidler, Day 26, pages 64-65.
521 Shvidler, Day 26, pages 65-66.
522 Shvidler, Day 26, page 64.

1108. Mr. Rabinowitz also submitted that there was no credible reason for Mr. Berezovsky to have required such a meeting, simply so that he could be informed of the merger deal, and that the only sensible rationale for his presence, and that of Mr. Patarkatsishvili at a meeting with Mr. Deripaska, was that the time had arrived when negotiations had advanced to the point where a deal could be agreed, and Mr. Berezovsky and Mr. Patarkatsishvili were needed to agree to the final terms of the agreement with Mr. Deripaska pursuant to clause 4.2 of the Preliminary Agreement. Mr. Sumption, on the other hand, whilst accepting that it had never been entirely clear what Mr. Berezovsky expected out of the meeting, suggested that:

> "… he was certainly a man with a rich sense of his own importance and a taste for grandstanding may well be a sufficient explanation of why he wanted to have it."

1109. I conclude, contrary to Mr. Rabinowitz's submission, that it was entirely understandable why Mr. Berezovsky would have wanted such a meeting, and that the fact that he required Mr. Abramovich to attend was entirely consistent with the *krysha* relationship between the two men. Thus whilst, perhaps, as Mr. Sumption suggested, Mr. Berezovsky wanted to figure as the great man involved in one of the important events of the Russian business world, and to highlight his own importance, he would also have seen the RusAl merger, and the profits it might generate, as an opportunity for increasing the quantum of his financial demands on Mr. Abramovich. Mr. Berezovsky's perception, and possibly also that of Mr. Patarkatsishvili, as I have already held, was that they considered themselves entitled, under their *krysha* relationship, to a "slice" of Mr. Abramovich's "action". In those circumstances, I do not find it at all surprising that Mr. Berezovsky would have wished to have demonstrated his hold over Mr. Abramovich and required his presence at the meeting; nor do I find it surprising that Mr. Abramovich felt it necessary to comply with the wishes of his protector.

1110. Mr. Abramovich asked Mr. Deripaska to accompany him on the trip to meet Mr. Berezovsky. Mr. Abramovich gave a number of reasons why he did so. First, Mr. Abramovich felt that Mr. Deripaska realised that "to achieve peace it was necessary to get together, meet and put an end to this"[523]; I have already described above the background to Mr. Deripaska's dislike of both Mr. Berezovsky and Mr. Patarkatsishvili. Second, Mr. Abramovich wanted Mr. Deripaska to accompany him to London because he saw it as a useful occasion on which to discuss the numerous issues which had arisen from a hastily constructed merger that had created the second largest aluminium company in the world. Mr. Abramovich described how the luxurious and quiet environment of his private jet was a convenient place in which to do business. Third, he explained that such a meeting was a means of demonstrating to Mr. Deripaska that he had powerful friends and associates in Mr. Berezovsky and Mr. Patarkatsishvili. I accept those reasons.

1111. Mr. Deripaska, in his witness statement, gave the following evidence as to why he accompanied Mr. Abramovich:

> "In March 2000, Mr. Abramovich asked me to accompany him to London to meet Mr. Berezovsky. I was keen to build a good

[523] Abramovich, Day 19, page 127.

> relationship with Mr. Abramovich as my new business partner. In addition, Mr. Berezovsky still owed me the abovementioned money and Mr. Shvidler assured me that the repayment of this long-standing debt would be resolved at the meeting. As a favour to Mr. Abramovich and in the hope of recovering the money Mr. Berezovsky owed me, I agreed to travel to London to meet him. The three or four hour plane journey was nothing out of the ordinary for me since I often had to travel long distances for business - the aluminium plants which I controlled were located in Eastern Siberia, over 3,000 kilometres from Moscow. I recall thinking that the flight would be a good opportunity to get to know Mr. Abramovich and Mr. Shvidler better. Whilst all the key terms of the combining of various of our businesses had already been agreed and documented in the Preliminary Agreement, there were a number of ongoing issues to discuss in relation to the new business."

He supported that account in cross-examination. The integration of the two groups of businesses had been in progress ever since the execution of the Preliminary Agreement and clearly there were many practical issues to discuss. Mr. Deripaska's explanation that he also saw the meeting as an opportunity for him to confront Mr. Berezovsky about his unpaid and long overdue loan was also entirely credible. It was clear from his oral evidence that he had been genuinely irritated by Mr. Berezovsky's failure to repay the loan of $16 million which Mr. Deripaska had made to him. I accept Mr. Deripaska's evidence as to his reasons for attending the meeting.

1112. In both Mr. Berezovsky's oral and written[524] closing submissions, there was an extensive critique of Mr. Abramovich's, Mr. Deripaska's and Mr. Shvidler's stated reasons for the meeting. Taken individually, in an evidential vacuum, some of the arguments might have had some force. But against a background where Mr. Berezovsky was asserting that the meeting had been agreed in advance - an allegation which had no evidential foundation, and which, from a practical point of view, was highly unlikely[525] - and where he had had no other involvement whatsoever in the negotiations, I had little hesitation in preferring the evidence of Mr. Abramovich, Mr. Shvidler and Mr. Deripaska on this point. In this context I should say that I have taken into account Mr. Rabinowitz's argument that clause 4.2 of the Preliminary Agreement was consistent with, and explained the need for, the Dorchester Hotel meeting, and that "because of his warranty, Mr. Abramovich had to ensure that his partners really did consent to the merger with Mr. Deripaska"[526]. The argument provided little assistance to me in deciding whose evidence to accept. That clause was merely a warranty of Mr. Abramovich's "partners' concerted will to sign" what, in the event, was the 15 March SPSA. There was no practical or legal requirement, under that clause, to wheel Mr. Deripaska in to meet Mr. Berezovsky and Mr. Patarkatsishvili to demonstrate their consent. Moreover, if, on Mr. Berezovsky's hypothesis, Mr. Abramovich had needed to ensure that he had, in

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524 Paragraphs 1196-1199.

525 Since there was no logical reason why Mr. Abramovich, (possibly Mr. Deripaska) and Mr. Shvidler would have flown from London to Moscow on 12 March only to have returned the following day.

526 See for example paragraph 1175 of Mr. Berezovsky's written closing submissions.

truth, obtained Mr. Berezovsky's and Mr. Patarkatsishvili's consent or "will to sign" the 15 March SPSA, it was surprising, to say the least, that they were not provided, in advance, with a draft of the SPSA for their approval, and were not required to sign it. Still more surprising is that Mr. Berezovsky was not provided with, and did not see a copy of, either the Preliminary Agreement or the 15 March SPSA until they were disclosed during the course of this litigation.

The Dorchester Hotel meeting

1113. Mr. Abramovich, Mr. Deripaska and Mr. Shvidler all gave broadly consistent accounts of what occurred at the Dorchester Hotel meeting. I prefer their evidence to that of Mr. Berezovsky. My findings of fact in relation to the direct evidence relating to the Dorchester Hotel meeting can be summarised as follows:

i) The meeting was scheduled to take place in the early afternoon. Mr. Abramovich, Mr. Deripaska and Mr. Shvidler turned up about 1pm at the Dorchester Hotel and went to the sitting room in Mr. Patarkatsishvili's suite. Mr. Deripaska had not been warned to expect Mr. Patarkatsishvili and was clearly irritated by his presence. There was an uncomfortable hour or so during which the four men hung around waiting for Mr. Berezovsky. Mr. Berezovsky, who had been at the House of Lords all morning in connection with the *Forbes* litigation, finally turned up sometime after 2pm. He appeared from another room in the suite informally dressed in a dressing gown[527], which hardly suggested that the meeting was one at which critical business decisions had to be taken.

ii) Thereafter the meeting was awkward and brief. It lasted no more than an hour. There were no negotiations about the terms of the merger. Mr. Berezovsky claimed in cross-examination that there were five key terms finalised at the Dorchester Hotel meeting, namely:

a) the proportions of the business to be owned by the Deripaska side and the Abramovich side;

b) the role of Mr. Abramovich in the merged business and the management arrangements;

c) the governing law;

d) the price (i.e. the equalisation payment); and

e) the provision that none of the participants (including Mr. Deripaska) would be entitled to sell out without the consent of the others.

But all these key points (except for the last) had in fact been agreed under the terms of the Preliminary Agreement and there was no need for any further negotiation. By the time of this meeting, the merger was a done deal. So far as the last provision was concerned, I find it was never raised or agreed at all,

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527 I do not accept that the dressing gown evidence was "concocted" as a result of collusion between Mr. Abramovich, Mr. Shvidler and Mr. Deripaska. There is no reason why the detail of this sort should have featured in their written witness statements.

whether with Mr. Deripaska, or simply as between Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili. If such a term had indeed been agreed with Mr. Deripaska, as Mr. Berezovsky alleged, it is inconceivable, given its critical importance, that it would not have found its way into the 15 March SPSA or the later 15 May Restated SPSA. Apart from the high degree of commercial improbability that Mr. Deripaska would ever have agreed to such a term, given his dislike of Mr. Berezovsky and Mr. Patarkatsishvili, Mr. Berezovsky's evidence in cross-examination on this aspect was particularly unconvincing.

iii) The one term which Mr. Berezovsky claimed he was able specifically to recall was that all participants at the Dorchester Hotel meeting agreed an equalisation payment of $575 million. This assertion had appeared in his witness statement at paragraph 278. He repeated it in cross-examination before being taken to the terms of the Preliminary Agreement and the 15 March SPSA which referred to a figure of only $400 million, when he attempted to backtrack. However the figure of $575 million clearly could not have been agreed on that occasion. As I have described above, the equalisation payment fixed in the Preliminary Agreement and referred to again in the 15 March SPSA was $400 million: the $575 million figure was not introduced until the 15 May Restated SPSA, when the Bratsk assets and the Sayansky plant were introduced into the merger for the first time. I infer that Mr. Berezovsky (or more probably someone on his behalf) had picked up this figure when looking at the 15 May Restated SPSA in the course of the litigation and Mr. Berezovsky had crafted his evidence accordingly.

iv) In particular, and contrary to the assertion made by Mr. Berezovsky, but which was not put to any relevant witness, I find that there was no discussion at the Dorchester Hotel meeting about the inclusion of the Bratsk assets in the merger in return for increasing the equalisation payment due from Mr. Deripaska from $400 million to $575 million. The suggestion that it had been discussed was put forward in argument as a reason why Mr. Berezovsky would have remembered the figure of $575 million; it was also suggested that the reason why the provision was omitted from the 15 March SPSA was lack of time. But there was no evidence whatsoever to suggest that the additional contribution of the Bratsk assets on Mr. Abramovich's side, and of the Sayansky plant on Mr. Deripaska's side had been agreed at the time of the 15 March SPSA, with a resultant increase in the equalisation payment to $575 million. Nor did Mr. Berezovsky suggest in cross-examination that there had been any agreement at the Dorchester Hotel meeting about the value at which the Bratsk assets and the Sayansky plant would be contributed to the deal, with a consequent increase in equalisation payment.

v) I find that the RusAl merger was indeed discussed at the Dorchester Hotel meeting, despite Mr. Deripaska's failure to remember that fact. But the discussion would have been superficial. The rest of the talk was about the aluminium wars, the current state of Russian politics, the repayment of a debt which Mr. Berezovsky owed to Mr. Deripaska, but which had not been paid back for several years and Mr. Patarkatsishvili's request to be provided with an aircraft. It was agreed that an aircraft would be purchased for

Mr. Patarkatsishvili as part of his fee for the assistance which he had provided Mr. Abramovich in connection with the acquisition of the pre-merger aluminium assets. It was also agreed that Mr. Abramovich would discharge Mr. Berezovsky's debt to Mr. Deripaska by means of a set-off against the sums owed by Mr. Deripaska to Mr. Abramovich under the terms of the Preliminary Agreement. But I reject Mr. Berezovsky's claim that the critical terms of the merger were negotiated or agreed at the Dorchester Hotel meeting; his evidence in cross-examination came nowhere near to supporting such a suggestion.

vi) Apart from the fact that all of the key terms of the merger had already been agreed and contained in the Preliminary Agreement, Mr. Berezovsky's evidence about the Dorchester meeting was undermined by the fact that all the members of the working party who gave evidence (Mr. Tenenbaum, Ms. Panchenko and Mr. Hauser) denied any knowledge of the Dorchester Hotel meeting and that any mention was made at any stage of Mr. Berezovsky or Mr. Patarkatsishvili having any underlying interest in the merger. Moreover they were never given to understand that they should wait for instructions from their principals as to the outcome of such meeting. Mr. Berezovsky's evidence was likewise undermined by his absence of knowledge of the Preliminary Agreement and of any of the subsequent agreements by which the merger was effected.

vii) Contrary to Mr. Berezovsky's evidence, there was no discussion or agreement reached at the Dorchester meeting, whether express or implied, that Mr. Abramovich would, as trustee, hold half of his 50% interest in RusAl on trust for Mr. Berezovsky and Mr. Patarkatsishvili, as beneficiaries; or that Mr. Abramovich would assume fiduciary obligations in relation to Mr. Berezovsky and Mr. Patarkatsishvili. It follows that there was also no discussion or agreement that such alleged trust arrangements would be governed by English law.

1114. It follows that I reject Mr. Berezovsky's evidence in relation to the Dorchester Hotel meeting. In reaching this conclusion, I have taken into account all the circumstantial evidence relied upon by Mr. Berezovsky, the principal aspects of which I address specifically below.

The circumstantial evidence relied upon by Mr. Berezovsky in support of his claim to have acquired an interest in the merged entity

1115. I turn now to consider the circumstantial evidence, largely relating to the period after the date of the Dorchester Hotel meeting, which was relied upon by Mr. Berezovsky as strongly supporting his claim that he and Mr. Patarkatsishvili had an interest in the merged RusAl business. Again I emphasise, that, in evaluating the direct evidence, and arriving at the conclusion which I have set out above, I have also taken into account this circumstantial evidence in order to test whether my preliminary conclusions on the former should be varied, or, at the least, further informed, by my views on the latter. I also repeat, that in evaluating Mr. Berezovsky's case in relation to the Sibneft issues, and in particular Issue A1, I have taken into account those aspects of the RusAl circumstantial evidence that were relied upon by

Mr. Berezovsky as supporting his case that he had an interest in Sibneft shares and Sibneft related profits or generally as going to Mr. Abramovich's credibility.

1116. There is, however, a preliminary point to be made in relation to the circumstantial evidence relied upon by Mr. Berezovsky. As Mr. Adkin submitted in his written closing submissions[528], one has to assess Mr. Berezovsky's points on the circumstantial evidence against the background of what, in relation to that period, the logic of Mr. Berezovsky's case entailed:

i) At the centre of Mr. Berezovsky's case in the Commercial Court Action was the claim that he and Mr. Abramovich fell out spectacularly, very shortly after the arrest of Mr. Glushkov in early December 2000; as already described, this involved the allegation that, using Mr. Glushkov as a hostage, Mr. Abramovich had been instrumental in forcing Mr. Berezovsky to sell, for a fraction of their true value, first his interests in ORT, and then in Sibneft, and that, in doing so, Mr. Abramovich had betrayed his promise to procure Mr. Glushkov's release, not once but twice.

ii) Against that background, Mr. Berezovsky's case in relation to RusAl required one to accept that, notwithstanding what had allegedly happened in relation to ORT and Sibneft, Mr. Berezovsky was content, after December 2000 and May 2001, to leave his interest in the aluminium business in the hands of Mr. Abramovich, and took no steps to record or document that interest in any way.

iii) That case also required one to believe that, whilst asserting an interest in the profits generated by RusAl, Mr. Berezovsky took no steps to establish what those profits might have been, or what he was entitled to from them, or indeed whether he was being paid any such profits at all (save to say that he assumed Mr. Patarkatsishvili would have told him if he was not).

iv) Mr. Berezovsky's case also assumed that, whilst Mr. Abramovich was prepared to betray Mr. Berezovsky in relation to ORT and Sibneft, it was safe for Mr. Berezovsky to assume that Mr. Abramovich would not do so in relation to Mr. Berezovsky's wholly undocumented interest in RusAl, and indeed would continue to pay him very large sums in respect of such interest for years afterwards.

v) Mr. Berezovsky's case also required one to accept that, notwithstanding his claimed half share in the $585 million payment made following the sale of the RusAl shares in July 2004, he had no idea what happened to those millions, save for an investment of a portion of them, which he claimed, he and Mr. Patarkatsishvili made in MGOK/Metalloinvest. As to that investment, Mr. Berezovsky's case also required one to believe that, notwithstanding their previous experiences, neither he nor Mr. Patarkatsishvili troubled to document their interest in it.

1117. The principal circumstantial evidence relied upon by Mr. Berezovsky related to the following topics:

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528 Paragraph 52.

i) the terms of the merger agreements in 2000;

ii) the Le Bourget transcript;

iii) planning documents of his staff and advisers treating RusAl as his asset;

iv) the "Curtis notes";

v) the alleged distribution to Mr. Berezovsky of RusAl profits;

vi) the sale in 2003 of the first 25% tranche of RusAl shares held by Mr. Abramovich to Mr. Deripaska;

vii) the sale in 2004 of the second 25% tranche of RusAl shares to Mr. Deripaska via Cliren; and

viii) the interviews with Mr. Patarkatsishvili.

The terms of the merger agreements

1118. Mr. Berezovsky relied on the references to the "partners" of Party 1 (Mr. Abramovich) in the Preliminary Agreement at clauses 4.1 and 4.2 (quoted above) to support his claim to have been an undisclosed party to the Preliminary Agreement. Mr. Rabinowitz submitted that, if clauses 4.1 and 4.2 were taken at their face value and given their ordinary and natural meaning, it demonstrated that Mr. Abramovich did indeed have partners who, together with him, were entering into the merger with Mr. Deripaska. He further submitted that, if it had been the case that Mr. Abramovich really had had no partners, as the latter contended, then the obvious warranty for Mr. Abramovich to have given to address Mr. Deripaska's concerns would have been a warranty that Mr. Abramovich had no partners and was acting solely on his own behalf. Mr. Rabinowitz also submitted that clause 4.2 was consistent with, and explained the need for, the Dorchester Hotel meeting. I have already addressed this second point above.

1119. Mr. Berezovsky did not claim to have been involved in any way in the drafting of the Preliminary Agreement and did not see it at the time. Indeed, as I have already mentioned, he did not see it until disclosure in these proceedings. There was no evidence to suggest that Mr. Patarkatsishvili had had anything to do with the drafting of the agreement or had seen it either. Mr. Berezovsky's assumption that "partners" referred to him and Mr. Patarkatsishvili was not supported by the evidence. There was no evidence to suggest that any of the participants had Mr. Berezovsky or Mr. Patarkatsishvili in mind. The background to the inclusion of the "partner" provisions was the aluminium industry where rivalries and mutual distrust were rife.

1120. Four of the individuals who were present at the negotiations leading up to the Preliminary Agreement gave evidence in relation to this point. Mr. Rabinowitz submitted that their evidence was mutually inconsistent and incoherent. Mr. Berezovsky's written closing submissions subjected it to a detailed and semantic critique[529]. However, such inconsistencies as there were, were minor and no more than matters of emphasis. It was not surprising, in the circumstances, that some of the

[529] Paragraphs 1164 – 1175.

participants had different motivations for requiring warranties. The evidence showed that there were a number of underlying concerns which resulted in the use of the term "partners": first, there was a concern on the Deripaska side, that no part of TWG should be included in the deal; second, not all of the aluminium assets which Mr. Abramovich was bringing to the merger were at that time within his control; it was therefore necessary to provide that he had responsibility for ensuring that the third parties who controlled those assets did what was necessary to enable the merger to take place.

1121. Mr. Bulygin, the draftsman of the agreement, who, because he was ill, could not attend the trial, described the matter as follows in his witness statement:

> "13. I also recall well the discussion which lay behind the provisions of Clause 4.1 which refers to the principals and their partners warranting that they own the assets. The reference to partners in Clause 4.1 expressly excludes anyone from TWG. This was significant. At the beginning of the discussions, neither Mr. Deripaska nor I believed that Mr. Abramovich could have purchased the Aluminium Assets and that he had paid such a large sum. The TWG shareholders had spent so long aggressively acquiring and building up the Aluminium Assets that we could not quite believe that they had relinquished them to Mr. Abramovich or that they were now out of the industry. We suspected that Mr. Abramovich could be a nominal owner only and that we might find ourselves having to deal with our rivals again. Mr. Abramovich convinced us, however, that he really had purchased the Aluminium Assets and that he intended to retain them. I believe there was the same suspicion on the other side about TWG, so the parties included a mutual warranty by which each side expressly disclaimed that anyone from TWG was a partner. Given the focus of the discussion about TWG, I do not recall any discussion about who, if anyone was a partner of each principal. For my part I assumed that Mr. Shvidler was Mr. Abramovich's partner. I am certain that there was no discussion by telephone with, or mention of, either Mr. Patarkatsishvili or Mr. Berezovsky throughout the entire meeting.
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> …
>
> 26. I never saw Mr. Berezovsky at any stage of the merger, nor did I ever hear from anyone at that time of Mr. Berezovsky having an interest in any of Mr. Abramovich's assets that went into the merger. I also do not recall any mention of Mr. Patarkatsishvili having an interest in any of Mr. Abramovich's assets that went into the merger. I have never been involved in any business with either Mr. Berezovsky or

> Mr. Patarkatsishvili. Indeed, I never met Mr. Patarkatsishvili and I have never formally met Mr. Berezovsky…."

1122. In his oral evidence, Mr. Abramovich confirmed that he did not have any "partners" in the transaction. He said that the contract was written precisely to make sure that neither side needed other people's warranties and referred to the fact that Mr. Deripaska had other partners in relation to various plants that Mr. Deripaska was contributing to the merger. His evidence was that, by the time that the Preliminary Agreement was signed, at his home later the next day, he was so exhausted that he did not read the document and left it to Mr. Shvidler to read through. In cross-examination, he said that he believed that it reflected Mr. Deripaska's concern to ensure that TWG did not feature in the transaction as undisclosed parties. He explained that some of the assets which he was contributing to the merger did not belong to him, but to others, and therefore it was necessary for there to be a provision that he was responsible that they would deliver; in the eyes of Mr. Deripaska, such people were indeed Mr. Abramovich's partners. He explained that Mr. Deripaska's concern about the silent involvement of TWG was underlined by the fact that Mr. Abramovich had not yet fully consolidated ownership of the assets which he was contributing to the merger. The fact that Mr. Abramovich had agreed to sell aluminium assets, to which he yet had to obtain title, was borne out by the evidence.

1123. Mr. Shvidler's evidence was to similar effect. He was cross-examined on the basis that the reference to "partners" included him, as well as Mr. Berezovsky and Mr. Patarkatsishvili; he denied such suggestion and explained that he was not a partner of Mr. Abramovich or his companies; he said that he had understood the reference to partners was simply a reference to third parties (such as owners of other aluminium plants, which Mr. Abramovich had agreed to contribute to the merger) upon whose conduct the practical fulfilment of the merger was dependent. The reference to the "partners" of the parties (i.e. Mr. Abramovich and Mr. Deripaska) was intended as an indication that the parties would take responsibility for ensuring that those stakeholders did what was necessary to ensure that the merger was effective. Mr. Rabinowitz sought to make capital out of the fact that clause 4.2 envisaged such parties actually signing the agreement, and the sellers of the various aluminium plants would not be actually signing up to the merger agreement. But I did not find that argument persuasive; apart from the fact that the agreement was a hastily drawn one, the logic would demand that Mr. Berezovsky and Mr. Patarkatsishvili were intended to sign the agreement - something which was never suggested.

1124. Mr. Deripaska's evidence about the reference to "partners" was to the same effect. He observed that Mr. Bulygin had drafted the document in a hurry and that it would have been much more appropriate to say "interested parties or stakeholders" rather than "partners"[530]. He explained the commercial context very clearly in his oral evidence:

> "You see, the assets that Abramovich had acquired at that time were in a rather complex -- complicated condition. All those factories were on the brink of bankruptcy, including the

[530] Deripaska, Day 29, page 32.

> Achinsk plant, which had already been put under external management, was in administration. And unless swift action had been started, almost immediately, in order to achieve a recovery from the crisis -- and this is a production that cannot be stopped, this is a continuous production -- even if for one day they had fallen short of feedstock the assets would have been greatly damaged and harmed. I was interested, I had a vested interest in making sure that everything that we had agreed upon be implemented very, very accurately and clearly in order to save those plants. Now, for that, all the interested persons had to act together, and that means the suppliers, the managers of those plants, those people who had trade relations with those plants. And this is exactly what I asked Mr. Abramovich to ensure that it happened, to the extent that that was under his influence[531]."

1125. Mr. Berezovsky put forward similar arguments in relation to the use of the phrase "Other Selling Shareholders" in the 15 March 2000 SPSA and the phrase "Other P1 Shareholders" in the 15 May Restated SPSA. Again Mr. Berezovsky suggested that these phrases clearly reflected the understanding of the parties thereto that there were shareholders other than Mr. Abramovich in his companies, and that, in fact, these shareholders were Mr. Berezovsky and Mr. Patarkatsishvili.

1126. Mr. Hauser, who was a principal draftsman of the documents, explained that the parties had little time to conduct the ordinary due diligence that would be expected on a transaction of this type, and that there were essentially four reasons why he used the term "Other Selling Shareholders". In summary, these were: first, to cater for the possibility that certain of the companies in which Mr. Deripaska was acquiring an interest were held by Abramovich entities other than Runicom; second, because it was unclear whether Mr. Abramovich's companies had completed the acquisition of all of the shares in the underlying companies which were to be sold to Mr. Deripaska; third, because of a suspicion on Mr. Deripaska's side that TWG still had some kind of an interest in the assets that were being sold, and Mr. Hauser was concerned to ensure that the agreement was enforceable even if it transpired that TWG did still have such an interest; fourth, there was a possibility that Mr. Abramovich had partners himself – although the person that Mr. Hauser and Mr. Schneider focused on in this regard was Mr. Shvidler (who was running the deal negotiations), and no other names were mentioned in this connection. More generally, Mr. Hauser said that there was no mention of either Mr. Berezovsky or Mr. Patarkatsishvili in the negotiations for this agreement[532]. Mr. Hauser's recollection was that in the course of the negotiations there was no sensitivity or issue raised on either side regarding naming other partners and that formed no part of the motivation for the inclusion of the somewhat ambiguous phrase "Other Selling Shareholders". He also referred to the fact that the companies owning the underlying assets were bearer share companies, which meant that the language had to ensure that what they understood to be the position remained the position[533]; the phrase was therefore drafted in the broadest possible way.

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531 Deripaska, Day 29, page 34.
532 Day 31, page 6.
533 Hauser, Day 31, pages 55-56.

1127. Mr. Tenenbaum (who was also involved in the negotiations from the Abramovich side) gave a similar explanation to that of Mr. Hauser. It was for essentially the same reasons that a similar phrase ("Other P1 Shareholders") was used in the 15 May Restated SPSA. Again, neither Mr. Berezovsky's nor Mr. Patarkatsishvili's names were mentioned in this connection.

1128. Once again, Mr. Berezovsky's written closing submissions contained an extensive and detailed analysis as to why it was said that the evidence of Mr. Hauser and Mr. Tenenbaum was unsatisfactory; and why Mr. Abramovich and Mr. Tenenbaum could not have offered the warranty which, on Mr. Abramovich's case, he should have been offering (namely a warranty that he was the sole beneficial owner of the four Offshore Companies), "because both Mr. Tenenbaum and Mr. Abramovich (and indeed Mr. Deripaska) knew that it would have been untrue"[534]. I do not accept that criticism. I can see every reason why, as Mr. Tenenbaum explained, it would have been undesirable and unnecessary for Mr. Abramovich himself to have given a personal warranty or guarantee that Runicom was the sole beneficial owner of the shares in the Offshore Companies; Mr. Abramovich was not even a party to the 15 March SPSA, and it would not have been appropriate for him to have become a party in a personal capacity; and there was simply no need to investigate, or reveal, the corporate or trust structures under which the Offshore Companies were held or had been acquired.

1129. In the light of all the evidence which I heard from those who were concerned with the drafting of these documents, and which I accept, I cannot attach the significance that Mr. Berezovsky's submissions seek to place on these words.

The Le Bourget transcript

1130. Mr. Berezovsky contended that the Le Bourget transcript was "compelling evidence" that Mr. Berezovsky and Mr. Patarkatsishvili had an interest in RusAl. Mr. Berezovsky's argument based on the Le Bourget transcript depended on the use by Mr. Abramovich of the word "we" when referring to his holding in the merged aluminium business - RusAl. Mr. Rabinowitz submitted that the use by Mr. Abramovich of the plural "we" was an admission that Mr. Abramovich held the RusAl shares together with Mr. Berezovsky and Mr. Patarkatsishvili. The relevant Boxes relied upon were Boxes 497 - 514 which read as follows:

497	B:	The same will have to be done with Aluminium.
498	A.	What do you mean by 'the same'?
499	B:	With Aluminium, need (to do the same)
500	A.	**You cannot do anything with Aluminium, that's for sure.**
501	B:	Why not?
502	A.	**We only hold 50 per cent there, so the other party has to agree.**

[534] Paragraphs 1262-1269; see also pages 259 – 261 of Mr. Berezovsky's Second Schedule.

503	B:	(So what)?...
504	A.	And they will demand the same, will demand the same. Tax affairs haven't been regulated yet for Aluminium, so there is no point in applying this [scheme] there. It would significantly reduce income. **Besides, you will have to wait in line to receive dividends.**
505	B:	Fine, what I'm saying is… in any case, the time will come, finally… nnn…
506	A.	Nnn… with Aluminium it is very simple. **If we go legal, they would have to do the same.** They can't have one half legalised, and the other half – not.
507	B:	I agree, so…
This 508	A.	**(Then they) will all appear: Bykov, Misha, Anton and Aksyon, and Oleg Deripaska and (his)… nnn… companies nobody would even talk [to them / to it / to us / about it]. You don't agree with this, do you?**
509	B:	Nnn… I have a different view (all the time).
510	A.	Well then, now I have a different one. (Perhaps we are) in such a situation, that (they)…
511	B:	Nnn...a completely different view. You know, they all understand everything already. It will never ever be possible to prove to anyone or anybody that I (haven't moved residence). This, nobody is prepared to believe it. You can (say) whatever you like. Let's believe it is not so.
512	A.	They don't think it's wrong. The only thing which stops them from talking to us seriously, is just a feeling, a hunch that you might be there. This is the only thing which is stopping them.
513	B:	Roma, but I can tell you (that we have now), we've spent a lot of time (for the West)...
514	A.	I've understood all your arguments...I know you, you said...nnn...spent a lot of time (but not on this subject)....

[Emphasis as supplied in Mr. Berezovsky's closing submissions]

1131. Mr. Rabinowitz also submitted that this passage demonstrated that Mr. Abramovich was refusing to allow Mr. Berezovsky and Mr. Patarkatsishvili to formalise their interests in Sibneft and RusAl not because Mr. Abramovich rejected any suggestion that those ownership interests existed, but rather because Mr. Abramovich said that he was not prepared officially to document his relationship with either Mr. Berezovsky or Mr. Patarkatsishvili.

1132. I do not accept those submissions. This section of the transcript quoted above followed immediately upon a passage in which the three men were discussing the means by which Mr. Abramovich could continue to pay Mr. Berezovsky and Mr. Patarkatsishvili in the light of the re-organisation of his trading companies. As I have already described, the subject of the discussion at the Le Bourget meeting was what should be done to "legalise" Mr. Berezovsky's receipts, i.e. to ensure that the

money that was paid to him would be received in a way that would satisfy Western banks' money laundering rules. Again as I have already described, up to this date, whenever Mr. Berezovsky had wanted money, Mr. Abramovich had simply been able to draw on funds from his trading companies. However, from the end of 2000, the trading operations of those companies were being integrated into Sibneft, with the result that Mr. Abramovich's main source of cash would become Sibneft dividends, which were only payable on a six monthly basis. One proposal (which I have already referred to above) was that Mr. Berezovsky and Mr. Patarkatsishvili might become registered shareholders in Sibneft for the purpose of receiving their payments from Mr. Abramovich from an apparently legitimate source (Boxes 451 to 496).

1133. At Box 497, Mr. Berezovsky started the discussion about aluminium by saying that "the same will have to be done with Aluminium". In his written commentary on the transcript, Mr. Abramovich said that this appeared to be a suggestion that he (Mr. Berezovsky) should become a registered shareholder in RusAl. Mr. Berezovsky's argument was based on the use of the word "we" in the response "We only hold 50 per cent there" in Box 502. In context, and given the evidence which I heard from both men in relation to the Le Bourget meeting, and RusAl generally, I do not consider that the word "we" has got to be read in the way contended for by Mr. Berezovsky, i.e. as referring to Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili as, effectively, a partnership unit. I accept Mr. Abramovich's evidence that he used the word "we" to mean his side as opposed to Mr. Deripaska's side. As was submitted in Mr. Abramovich's written closing submissions[535], not only were there other places in the recording where Mr. Abramovich commonly used "we" to refer to things which he or his businesses had done, but Mr. Abramovich also emphasised that he generally used the term "we" rather than "I" when referring to his companies. Had I been more impressed by Mr. Berezovsky's evidence in relation to the RusAl and other issues, I might have been able to place some weight on this passage in the transcript as supporting his case; as it was, it was no more than a lightweight semantic point. Mr. Berezovsky also sought to rely on Mr. Abramovich's statement that "you will have to wait in line to receive dividends" at Box 504. Mr. Rabinowitz submitted that there was no reason why Mr. Berezovsky would have had any interest in dividends from RusAl, if, as Mr. Abramovich contended, Mr. Berezovsky had nothing whatever to do with the aluminium interests; there would had been no basis for Mr. Berezovsky to have waited in line at all. But, taken in context, one can see, that Mr. Abramovich's comment was a response to Mr. Berezovsky's suggestion that he should become a shareholder in RusAl in order to receive payments in the future, rather than any recognition of an existing interest.

Planning documents of his staff and advisers treating RusAl as his asset

1134. Mr. Berezovsky next sought to rely on various materials, all of which were generated after March 2000 and were internal to Mr. Berezovsky and Mr. Patarkatsishvili and their staff and professional advisers, such as Valmet/MTM. I have already considered these documents to a certain extent above in the context of my determination of the Sibneft issues. They were:

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535 Paragraph 431.

i) an undated "Explanatory Note" referring to the payment of $100 million commission to Mr. Patarkatsishvili;

ii) a brief biography of Mr. Patarkatsishvili;

iii) a structure chart apparently accompanying it, said to date from before 21 April 2000;

iv) the list of documents;

v) Mr. Samuelson's Inter-Office Memorandum, dated 5 September 2000; and

vi) an email from Mr. Samuelson to a Mr. Maillard attaching structure charts for the Hotspur and Octopus trusts.

1135. In the RusAl context, Mr. Rabinowitz relied on the fact that some of these documents appeared to have been based on the premise, or assumption, that Mr. Berezovsky and Mr. Patarkatsishvili had an interest in the merged aluminium business, i.e. RusAl. Mr. Berezovsky did not call any witnesses to explain the circumstances in which these documents were drafted, by whom, or for what purpose or otherwise to explain their content. He himself was not able to give any such evidence, as, by his own admission, he had not been involved, and indeed was never involved, in the detailed arrangements of his own financial affairs. However, what was clear from the evidence, and as I find, was that they were produced without any input from, or knowledge on the part of, Mr. Abramovich or any of his staff or advisers. Moreover, by this time (2000 and thereafter), as I have already explained when dealing with these documents earlier, Mr. Berezovsky and Mr. Patarkatsishvili recognised the need appropriately to document the provenance of their funds in order to comply with Western anti-money-laundering procedures. Many of the documents appear to have been designed for the purpose of showing Western bankers or professional advisers or trustees (such as Mr. Samuelson) so as to enable arrangements to be made for the receipt of Mr. Berezovsky's and Mr. Patarkatsishvili's funds in the West, in what might be referred to as a "legitimate" way. It is against that background that the weight of such evidence falls to be evaluated.

1136. It is likely that Mr. Fomichev, at one time Mr. Berezovsky's financial adviser, and Mr. Kay, at one time Mr. Patarkatsishvili's financial adviser, might have been able to have given relevant evidence about these matters, and indeed various other matters. Mr. Berezovsky did not choose to call either of these men, having apparently fallen out with both of them[536]. At various stages in argument[537], it was submitted on behalf of Mr. Berezovsky that Mr. Abramovich should have called Mr. Fomichev as a witness and indeed that it was an "oddity" that he had not done so. Furthermore Mr. Rabinowitz invited the court to draw various adverse inferences from what was characterised as Mr. Abramovich's "failure" to call Mr. Fomichev. I address this particular issue below in the context of the Curtis notes, where I explain why I disagree with the submission. For present purposes it is enough to say that, if Mr. Berezovsky chose to rely on various internal financial memoranda as supporting

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536 I have already described above that Mr. Fomichev owed substantial sums of money to Mr. Berezovsky.

537 See for example paragraphs 196-200 of Mr. Berezovsky's written closing submissions and Mr. Rabinowitz's oral closing submissions at Day 41, page 38.

his case on this issue, but did not want to call Mr. Fomichev, or Mr. Kay, that was a matter for him; but, in those circumstances, he had to bear the consequence that, necessarily, the court would attach limited weight to such material.

1137. The Explanatory Note, which referred to a payment of $100 million commission to Mr. Patarkatsishvili, was relied upon by Mr. Berezovsky to support his case not only that the Patarkatsishvili commission agreements were shams, but also to support the case that Mr. Berezovsky and Mr. Patarkatsishvili had ownership interests in relation to both Sibneft and the aluminium assets. The memorandum, which was undated and anonymous, spoke of a stage in an envisaged process whereby "the assets belonging to the partners [i.e. Mr. Berezovsky and Mr. Patarkatsishvili] in the main business projects" would be distributed; the listed assets included interests in LogoVAZ, "the aluminium complex", Sibneft, ORT and Aeroflot. It appeared that the Explanatory Note had been prepared for the purposes of presentation to Valmet, or Mr. Jenni, or other professional advisers of Mr. Berezovsky and Mr. Patarkatsishvili, probably sometime in or about April 2000. It, together with the second, third and fourth documents mentioned above, appeared to have been part of a package of documents which was intended to be sent, but which was never in fact sent, to Mr. Jenni, who denied in his evidence receiving it. The overwhelming likelihood is that the Explanatory Note was prepared in connection with the "legalisation" of Mr. Berezovsky's and Mr. Patarkatsishvili's funds outside Russia - in other words to present the picture that the two men had ownership in various assets that would explain their income streams.

1138. The Explanatory Note was subjected to an extensive evidential analysis in Mr. Berezovsky's written closing submissions to support the propositions, *inter alia* that it was authored by Mr. Streshinsky, that Mr. Anisimov advised Mr. Patarkatsishvili and/or Mr. Berezovsky about structuring his arrangements in relation to RusAl subject to "British law", and that Mr. Anisimov had knowledge of its contents. These submissions were amplified in Mr. Berezovsky's Second Schedule at pages 256-257 by a new linguistic analysis of the Russian text, to the effect that Mr. Streshinsky's authorship of the Explanatory Note was apparent from a comparison of the language, syntax and layout of the Note with three other Russian language documents that Mr. Berezovsky alleged were authored by Mr. Streshinsky. This in turn gave rise to supplementary written closing submissions from the Anisimov defendants served on 6 March 2012 and yet further written response submissions served by Mr. Berezovsky on 13 March 2012. This linguistic analysis was not put to Mr. Streshinsky in cross-examination, although he was cross examined on the Explanatory Note at length. Nor was it supported by the evidence of a Russian linguistic expert. In those circumstances I am not prepared to attach any weight to the new linguistic analysis.

1139. I reject the three contentions put forward by Mr. Berezovsky to the effect that the Explanatory Note was authored by Mr. Streshinsky, that Mr. Anisimov advised Mr. Patarkatsishvili and/or Mr. Berezovsky about structuring his arrangements in relation to RusAl subject to "British law", and that Mr. Anisimov had knowledge of its contents; the evidence did not support these contentions. Mr. Streshinsky convincingly denied authorship of the memorandum in cross-examination and there was no sensible reason why he should have prepared it; in particular, it is highly unlikely that he would have referred to Mr. Berezovsky and Mr. Patarkatsishvili as

"the clients". I also accept Mr. Anisimov's evidence that he gave no such advice to Mr. Berezovsky or Mr. Patarkatsishvili. Thus I accept the analysis put forward by Mr. Malek in his oral closing and supplemental submissions in relation to these four documents, as well as that put forward on behalf of Mr. Abramovich in his written and oral closing submissions. I conclude that the most likely author of the document was Mr. Kay, although that point is immaterial to my conclusion that neither Mr. Streshinsky nor Mr. Anisimov had any knowledge of its contents. The document wrongly asserts that Mr. Berezovsky and Mr. Patarkatsishvili had ownership interests in Aeroflot. Moreover, contrary to the submissions put forward on behalf of Mr. Berezovsky, the detailed information relating, for example, to the vendors of the pre-merger aluminium assets contained in the structure chart, that was apparently intended to be part of the package of documents, and the other three documents referred to above, would all have been available to Mr. Patarkatsishvili as a party to the Preliminary Agreement, and the commission agreements, and as somebody involved, in his capacity as intermediary, in the facilitation of the ten individual sale and purchase contracts referred to above.

1140. Likewise, for similar reasons little reliance can be placed on the Samuelson material, namely his Inter-Office memorandum and the e-mail attaching structure charts for the Hotspur and Octopus trusts. I have already addressed these documents in the context of the Sibneft issues. The information contained therein would have been derived from Mr. Berezovsky, Mr. Fomichev, Mr. Patarkatsishvili and/or Mr. Kay. Moreover none of the steps which the Samuelson material contemplated being taken - namely the placing of Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft or RusAl into trusts - was ever put into effect. Thus whilst Mr. Samuelson may have been told that Mr. Berezovsky and Mr. Patarkatsishvili owned such assets in order to reassure him as to the source of the funds which he was going to receive (which were said to be derived from their assets), such assets were in fact never placed, or purportedly placed, into any structures set up by him.

1141. Accordingly I do not place any weight on these materials as supporting Mr. Berezovsky's case that he had an ownership interest in RusAl. Once again, if I had been more convinced by Mr. Berezovsky's own direct evidence about the RusAl issues, I might have considered attaching some weight to what professional advisers such as Valmet were being told; but even on that hypothesis, such materials would have carried very little weight, given what little evidence there was about the circumstances in which they were generated and the fact that, certainly in relation to Aeroflot, they misrepresented the position.

The "Curtis Notes"

1142. I have already briefly referred to the Curtis notes in the context of the Sibneft issues and referred to Mr. Curtis' role in connection with the Spectrum and Devonia transactions. The available evidence about the provenance of the notes was that Ms. Flynn, a night secretary at Curtis & Co in 2003 and 2004, recalls that the notes were handed to her one evening by Mr. Curtis, who told her that they were vitally important. She noted this fact on a post-it sticker which she placed on the notes when she copied them. She could not recall when she was handed the notes by Mr. Curtis and the notes themselves are undated. Although they necessarily must have been produced by Mr. Curtis prior to his death in March 2004, there was no evidence as to

whether they were made by Mr. Curtis actually at the meeting which they purported to record, or sometime thereafter. They had been written in Mr. Curtis' manuscript.

1143. The notes purported to record a meeting with Mr. Patarkatsishvili at his house in Georgia in the summer of 2003, attended by Mr. Curtis, Mr. Fomichev, an unidentified man referred to as "Igor" and Mr. Tenenbaum. The relevance of the notes, if they were indeed a true record of what was discussed, was that they purport to record discussions, to which Mr. Tenenbaum was said to have been a party, which assumed that Mr. Berezovsky and Mr. Patarkatsishvili had been shareholders in Sibneft along with Mr. Abramovich; that they had sold those interests via a structure which had been complicated and costly; and that at the time of the meeting Mr. Berezovsky and Mr. Patarkatsishvili had a 25% interest in RusAl, as did Mr. Abramovich. The notes purported to record discussions concerning (among other things) the means by which Mr. Berezovsky and Mr. Patarkatsishvili might sell out of RusAl and sell their stake back to Mr. Abramovich.

1144. In his oral closing submissions, Mr. Rabinowitz in effect submitted that there could be no half-way house so far as the court's conclusion in relation to the Curtis notes was concerned; the court had two choices: either they were authentic notes accurately recording a discussion to which Mr. Tenenbaum was party, as Mr. Berezovsky submitted they were; or they were "a deliberate forgery created by an English solicitor, Mr. Curtis, and created for some reason which has never been adequately explained by Mr. Abramovich"[538]. Mr. Berezovsky's written[539] and oral[540] closing submissions contain a detailed analysis of some of the evidence relating to this issue.

1145. I conclude, on the basis of all the evidence, that the Curtis notes were not a direct or contemporaneous record of anything discussed in the presence of Mr. Tenenbaum on the occasion of his one and only visit to Mr. Patarkatsishvili's summer house in Batumi, Georgia, on what, as was common ground, and as supported by the flight records, was 25 August 2003. It is not necessary for me to decide whether Mr. Patarkatsishvili alone was dishonest in possibly suggesting to Mr. Curtis, that Mr. Patarkatsishvili, Mr. Fomichev and Mr. Tenenbaum had indeed had the discussions in Russian, which the notes purport to record (Mr. Curtis not being able to speak or understand Russian); or whether Mr. Curtis, either alone, or together with, Mr. Patarkatsishvili, was dishonest in purporting to record that such discussions had taken place in English in Mr. Tenenbaum's presence, as the notes appear to suggest; although I consider that the hypothesis that both men were dishonest is the more likely. If it were necessary to do so, I would not have difficulty in holding that Mr. Curtis was indeed dishonest in this respect, despite the fact that he was, to use Mr. Rabinowitz's words, "an English solicitor". His conduct in relation to the Spectrum and Devonia transactions demonstrated, as Mr. Abramovich's closing submissions somewhat euphemistically put it:

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538 Day 41, pages 44-45.

539 Paragraphs 1309 -1376.

540 E.g. Day 41, pages 44-57, Day 42, pages 46-47,68, 84, 91.

> "… a track record of recording meetings so as to create a desirable, rather than necessarily truthful, version of events[541]."

or, in more blunt language, that Mr. Curtis was quite prepared to manufacture sham documents where it suited his clients' purposes and created a significant fee opportunity for himself.

1146. In summary, my reasons for this conclusion, and the relevant facts, as I find them, are as follows:

i) Mr. Tenenbaum was the only witness who gave evidence in relation to this meeting. Despite the extensive challenge to his evidence in cross-examination, and the lengthy critique in Mr. Berezovsky's closing submissions, I found him to be a patently honest and reliable witness. Obviously, he was loyal to Mr. Abramovich. But, although that factor necessarily had to be taken into account in my evaluation, it did not detract from what I regarded as the underlying veracity of his evidence. In 2003 Mr. Tenenbaum was the managing director of the company now known as MHC (Services) Limited ("MHC"), based in London, a consultancy service company which provided consulting and administrative support to Mr. Abramovich. He had previously been the head of corporate finance at Sibneft and had been part of the working group responsible for the implementation of agreements between Mr. Abramovich and Mr. Deripaska to merge their respective aluminium interests into RusAl. However, his involvement with RusAl had been limited to certain aspects of the shareholders' agreement between Mr. Abramovich and Mr. Deripaska, as such agreements typically involved concepts with which he was more familiar, given his background in corporate finance and international mergers and acquisitions, when at Salomon Brothers. He had just been involved in Mr. Abramovich's acquisition of Chelsea Football Club, which had completed in July 2003, and it was largely to discuss football that he went to see Mr. Patarkatsishvili.

ii) Mr. Tenenbaum explained the reason for his trip to meet Mr. Patarkatsishvili and the nature of the so-called "meeting", in his witness statement as follows. :

> "86. I met Mr. Patarkatsishvili in Georgia on one occasion in 2003 (at a meeting at which Mr. Abramovich was not present), which I believe to have been in the late summer/early autumn of 2003 because I can recall that I had been heavily engaged in the acquisition of Chelsea Football Club and its aftermath at the time of the visit (that transaction completed in July 2003). Mr. Abramovich had told me that Mr. Patarkatsishvili had invited him to his seaside home to see the house, which had recently been completed, and to discuss with him the possibility of an investment in a football

[541] See page 143 of Mr. Abramovich' s Errata Schedule, commentary on paragraph 1314 of Mr. Berezovsky' s written closing submissions; and paragraph 441 of Mr. Abramovich's closing submissions.

club. Because of a Russian arrest warrant issued against Mr. Patarkatsishvili, he was not able to travel outside Georgia. Mr. Abramovich asked me if I could attend in his place as a sign of respect to Mr. Patarkatsishvili. I was in Moscow at the time and had no desire to go but, given my involvement with Chelsea Football Club, I reluctantly agreed. I travelled to Batumi, Georgia, in a chartered aircraft, and was then transported by Mr. Patarkatsishvili's helicopter to his house.

…

89. I recall that there were ten or so adults at the beach house and there were wives and children around. This was not a Western-style sit-down lunch, but rather a very informal gathering with people coming and going throughout the time I was there. I was taken on a brief tour of the house, but I spent the rest of the time outside, where food was served, with the other guests and family. In addition to Mr. Patarkatsishvili, I recall that Mr. Fomichev was there. I had met Mr. Fomichev before and knew him slightly. Additionally, I do recall that there was one gentleman who I took to be English, or perhaps American, who could have been Mr. Curtis, but I had not met him before and I have not seen him since. I believe I may have spoken with him briefly in English (I do not recall that he spoke any Russian, unlike the other guests), but this would have been nothing more than polite conversation - not about business matters. I did not take particular notice of this person.

90. All I can remember discussing with Mr. Patarkatsishvili was the recently announced acquisition by Mr. Abramovich of Chelsea Football Club, and I recall Mr. Patarkatsishvili saying that this had been a great idea and wanting to do the same. Mr. Patarkatsishvili raised the fact that he had some contacts in Brazilian football and enquired whether Mr. Abramovich had any interest in making an investment along with him. As I recall, he was hoping that this would enable him to travel to Brazil, despite the arrest warrant. He felt that he had acquired a negative image and said that he was hoping to get the same kind of positive publicity in Brazil as he saw Mr. Abramovich as having obtained in England. He was very excited about this idea. I assured him that I would speak to Mr. Abramovich about the proposal. I have a recollection that Mr. Patarkatsishvili also

mentioned that he had contacts in Georgian football circles and, I believe, he said that he had made an investment in Dynamo Tbilisi (a prominent Georgian football club). He may also have asked whether Mr. Abramovich would like to be involved in an investment in that club, but I cannot now be sure.

91. I stayed at the house for approximately two hours and then left to return to the airport where I took another charter flight, this time to Nice where Mr. Abramovich was staying. I passed the details of my conversation about investing in football clubs on to Mr. Abramovich when I met with him and Mr. Abramovich told me that he had no interest in investing, but that he was ready to consider assisting Mr. Patarkatsishvili in his venture. I then continued my return flight back to Luton and home in London. The following year Mr. Patarkatsishvili did invest in the Brazilian club Corinthians along with a partner, Kia Joorabchian. Mr. Abramovich did not provide any assistance in relation to the investment."

1147. I accept Mr. Tenenbaum's evidence, as set out above, that this was an informal open air meeting as opposed to a commercial meeting. Mr. Patarkatsishvili had held an investment in Dynamo Tbilisi (a prominent Georgian football club) since 2001, and he was interested in generating some positive publicity for himself in order to improve his image in the way in which, in his view, Mr. Abramovich had done by acquiring Chelsea F.C. It was common ground that around a year later, Mr. Patarkatsishvili was indeed engaged in negotiations for the purchase of a Brazilian football club. I reject the assertion, made by Mr. Rabinowitz in cross-examination, that, because Mr. Patarkatsishvili's negotiations in relation to Brazilian football did not take place until August 2004, the topic of football was unlikely to have been the subject matter of conversation at the meeting in Batumi in 2003. As Mr. Tenenbaum described, and as one might expect, the acquisition of Chelsea FC was a, if not the, principal topic of discussion between Mr. Tenenbaum and Mr. Patarkatsishvili at the luncheon party.

1148. I accept that any conversation between the two men and Mr. Fomichev would have been conducted in Russian. I accept that, irrespective of the extent of Mr. Patarkatsishvili's grasp of the English language, Mr. Tenenbaum would not have spoken in any other language than Russian to Mr. Patarkatsishvili. Unlike the others present, Mr. Curtis did not speak Russian. It therefore follows that Mr. Curtis could not have been directly recording in any note what was being said between Mr. Tenenbaum, Mr. Fomichev and Mr. Patarkatsishvili. That was however directly contrary to the impression given by Mr. Curtis in his Notes, which suggested that he was recording detailed business discussions in English. I also accept Mr. Tenenbaum's evidence that no one was taking a note of what were social conversations at an open-air lunch. I also accept his evidence that, if he had seen anyone taking a note, he would have asked for a copy of it.

1149. The entirety of Mr. Tenenbaum's evidence was wholly inconsistent with the notion that Mr. Tenenbaum had had the detailed discussions purportedly recorded in the Curtis notes. He had never met Mr. Curtis before and had never previously done business with Mr. Fomichev or Mr. Patarkatsishvili. Nor was Mr. Curtis well-known to Mr. Abramovich and Mr. Shvidler. Mr. Tenenbaum was adamant that he did not discuss the ownership or sale of RusAl. He knew little about it and indeed the matters purportedly covered in the notes were outside his knowledge and expertise. I found his explanation that he had had only a limited role in the acquisition of RusAl, and would not, without specific instructions, have discussed Mr. Abramovich's private business affairs in front of the people present, to have been entirely credible.

1150. There was an extensive thesis developed on behalf of Mr. Berezovsky that only Mr. Tenenbaum would have known some of the information contained in the Curtis notes. It is not necessary for me to engage in any detailed analysis of this evidence. Suffice it to say that a considerable amount of information about the structure of Mr. Abramovich's ownership interest in RusAl, and, in particular, the use of bearer share companies in the BVI, would have been available to Mr. Fomichev, Mr. Berezovsky's other representatives and Mr. Patarkatsishvili as a result of the $1.3 billion payment to Devonia, which had been structured through dividend payments from Mr. Abramovich's aluminium interests; likewise, various details of his ownership interest in RusAl, the aluminium trading company, had been made available to Mr. Berezovsky's representatives in connection with other payments. Mr. Patarkatsishvili himself would, as I have already mentioned, have had knowledge of certain of the offshore companies used in the context of his role as an intermediary in the conclusion of the Preliminary Agreement and the ten individual sale and purchase contracts. Moreover, as Mr. Berezovsky's own Particulars of Claim expressly recognised, the 50-50 split of ownership between Mr. Abramovich and Mr. Deripaska in respect of RusAl had been publicly announced by as early as 4 April 2001 and had been expressly confirmed in correspondence prior to Mr. Tenenbaum's visit to Georgia in the context of certain commission payments.

1151. There was, as I find, every reason why, by the time of the Patarkatsishvili lunch in August 2003, Mr. Curtis might have been keen to have "created evidence" of Mr. Patarkatsishvili's and Mr. Berezovsky's asserted interests in aluminium assets. In February 2003 Mr. Abramovich had told Mr. Patarkatsishvili that he was considering ending his joint venture with Mr. Deripaska in relation to aluminium; Mr. Abramovich explained that this would have involved settlement of Mr. Patarkatsishvili's outstanding commission. This would have raised in Mr. Patarkatsishvili's mind the problem of "legalising" any funds received in a manner that would have satisfied the anti-money-laundering compliance procedures of Western banks. Mr. Fomichev had previously suggested in late 2000 that future payments by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili could be "legalised" by transferring shares in Sibneft to them so that they could receive payment of dividends and justify their receipts in that manner. That, as I have already described, was a topic discussed at the Le Bourget meeting. The evidence suggested that a similar scheme was being considered by Mr. Patarkatsishvili and Mr. Curtis, shortly after the former's meeting with Mr. Abramovich in February 2003, when Mr. Patarkatsishvili instructed Mr. Curtis to prepare a draft memorandum of understanding between Mr. Abramovich and Mr. Patarkatsishvili, which would, if executed, have provided for the transfer of the shares in a company owning 25% of

RusAl to Mr. Patarkatsishvili (but not to Mr. Berezovsky) for a nominal amount, following which the shares were to be sold back to Mr. Abramovich. But the problem which Mr. Curtis faced, as Mr. Patarkatsishvili's legal adviser, as he had pointed out in 2000 in relation to the alleged interest in Sibneft, was the absence of any written record that Mr. Patarkatsishvili had ever had an interest in RusAl. I conclude that the likelihood is that Mr. Curtis wrote the Curtis notes in order to generate evidence of such an interest. As was recorded in the notes themselves, it was important "to create proof of ownership to show where/why proceeds of his own sales are derived". Whilst I do not need to make any particular finding in this respect, I am unable to attach any evidential weight to these notes as supporting Mr. Berezovsky's case in relation to an interest in RusAl.

1152. In this context, it would be somewhat surprising, if the Curtis notes indeed recorded a genuine meeting with Mr. Tenenbaum, that Mr. Patarkatsishvili never mentioned to Mr. Berezovsky's solicitors, in 2005 or 2007, any meeting in Batumi (or elsewhere) with Mr. Tenenbaum at which the RusAl assets were discussed. Mr. Patarkatsishvili appears to have told them that he first heard about Mr. Abramovich's sale to Mr. Deripaska "through the market", and indicated that he was unhappy to learn of it. If he had met with a representative of Mr. Abramovich a matter of months before the sale and discussed RusAl, it is almost inconceivable that he would not have mentioned it. Similarly, whereas Mr. Patarkatsishvili's draft proof indicated that Mr. Patarkatsishvili wanted to stay in the aluminium industry, and in particular wanted to stay in business with Mr. Abramovich, the Curtis notes record a suggestion that Mr. Patarkatsishvili wanted to sell to Mr. Abramovich.

1153. I found Mr. Tenenbaum's evidence on this topic cogent and credible. Contrary to the submissions made in Mr. Berezovsky's closing submissions, I did not find him to be either evasive, discomfited or "forced to admit" significant matters adverse to Mr. Abramovich's case in cross-examination. He was an impressive witness.

The absence of Mr. Fomichev as a witness

1154. There are two subsidiary, but related, points, which I need to mention in the context of the Curtis notes and also in a wider context. The first addresses certain evidence given by Mr. Tenenbaum for the first time in re-examination, and then in further cross-examination, in respect of Mr. Fomichev; the second relates to Mr. Rabinowitz's argument that adverse inferences should be drawn by the court from what was referred to as Mr. Abramovich's "failure" to call Mr. Fomichev, a topic to which I have already briefly referred above.

1155. In re-examination, in response to the question: "What enables you to be certain that no note was being taken at the meeting [at Mr. Patarkatsishvili's house in Georgia]?", Mr. Tenenbaum for the first time gave double hearsay evidence to the effect that Mr. Fomichev had told Mr. Shvidler and others, about six months prior to trial, that the Curtis notes had been compiled after Mr. Tenenbaum had left the Patarkatsishvili luncheon party and that they had been dictated by Mr. Patarkatsishvili to Mr. Curtis. That evidence had not appeared in any of Mr. Tenenbaum's or Mr. Shvidler's previous witness statements. In further cross-examination by Mr. Rabinowitz on this issue, Mr. Tenenbaum gave evidence that, in the context of a discussion as to whether to call Mr. Fomichev as a witness, Mr. Fomichev forwarded to Mr. Shvidler a text message said to be from Mr. Berezovsky which Mr. Fomichev read as a threat from

Mr. Berezovsky, which Mr. Fomichev said gave rise to concerns for his safety. Mr. Tenenbaum described the text message as being along the following lines:

> "A …: 'I know you're helping them. I'm watching you. I'm listening to your phone calls. I'm controlling your Skype.' And I think he referred to Dr. Evil, 'I'm Dr. Evil', something to that effect.
>
> Q. So you say Mr. Berezovsky signed himself off as 'Dr. Evil' in this?
>
> A. Correct."

1156. In Mr. Berezovsky's written closing submissions it was submitted that Mr. Shvidler and Mr. Tenenbaum, "… in an attempt to discredit Mr. Berezovsky and dishonestly to promote Mr. Abramovich's case" had "fabricated a story" about the "Dr. Evil" text message, which discredited both Mr. Shvidler and Mr. Tenenbaum as witnesses; and that it was inconceivable that such a damning text message would have been deleted by Mr. Shvidler if he had ever received it[542].

1157. Mr. Sumption explained that he was not prepared to call Mr. Fomichev as a witness, not only because Mr. Fomichev had been, throughout the relevant period, Mr. Berezovsky's agent, but also because it was part of Mr. Abramovich's case that Mr. Fomichev had been engaged in the preparation of sham documents for the purposes of laundering Mr. Berezovsky's money. For that reason, as well as the one referred to below, he did not rely on the above aspects of Mr. Tenenbaum's evidence (i.e. both relating to the alleged subsequent dictation of the Curtis notes by Mr. Patarkatsishvili, and the text message), since he said that he could not properly deploy hearsay evidence derived from Mr. Fomichev, in circumstances where he would not have been willing to call him as a witness in response to a counter-notice. However Mr. Sumption rebutted the suggestion that the evidence was fabricated and submitted that there was no evidence to support that proposition.

1158. In correspondence between the parties' respective solicitors following Mr. Tenenbaum's evidence, Skadden, Mr. Abramovich's solicitors, stated that, in accordance with his usual practice, Mr. Shvidler had deleted the message from his BlackBerry smartphone shortly after he had received it; that the BlackBerry had been forensically tested by IT experts instructed by Skadden "…. on behalf of our client", with a view to establishing whether the message could be retrieved; but that, as a result of the inherent limitations of the recovery process, and the manner in which messages marked as "deleted" in the memory on the handset were subsequently randomly overwritten by the smartphone's operating system, it had not been possible to recover the message; and, accordingly, although Mr. Tenenbaum confirmed the accuracy of the evidence which he had given to the Court, concerning the text message, in view of the fact that it had not been possible to produce the message in question, Mr. Abramovich did not propose to rely on that aspect of Mr. Tenenbaum's testimony.

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[542] Paragraphs 8 and 9.

1159. In the light of the understandable approach adopted by Mr. Abramovich's counsel and solicitors in relation to these two aspects of Mr. Tenenbaum's evidence, I have not relied in any way on such evidence in arriving at my conclusions about what occurred at the Patarkatsishvili luncheon party or about the Curtis notes. Nor have I relied upon such evidence in any other way, whether as casting light upon the reasons why Mr. Fomichev was not called as a witness, or as adversely reflecting upon Mr. Berezovsky's or Mr. Abramovich's case, their respective credibility, or otherwise. However, contrary to Mr. Rabinowitz's submissions, and consistent with my approach of disregarding this evidence in its entirety, I am not prepared to accept that the evidence was untrue in the sense of having been dishonestly fabricated by Mr. Shvidler and/or by Mr. Tenenbaum. As Mr. Sumption submitted, there was no evidence to support such an allegation. Whilst not tested by cross-examination, or supported by forensic evidence at trial, the explanation given in correspondence by Skadden as to why the message had been deleted, and why it could not be retrieved was, on its face, reasonable. If Mr. Berezovsky had wanted to base allegations of dishonesty against the two men on this material, then an application would have needed to have been made to recall Mr. Shvidler for further cross-examination, and to subject his smart phone, or the findings of Mr. Abramovich's IT consultants, to further scrutiny.

No adverse inference to be drawn from the fact that Mr. Abramovich did not call Mr. Fomichev

1160. I turn next to deal with Mr. Rabinowitz's submission that the court should draw adverse inferences from Mr. Abramovich's alleged "failure" to call Mr. Fomichev as a witness. The thrust of this submission was that, if called, Mr. Fomichev would have been unable truthfully to support Mr. Abramovich's case on Sibneft ownership, on the circumstances of the Sibneft sale, or on the RusAl dealings, and, in particular, would not have supported:

i) Mr. Abramovich's case that there was no partnership between Mr. Abramovich on the one hand and Mr. Berezovsky and Mr. Patarkatsishvili on the other;

ii) Mr. Abramovich's evidence as to the 'proposals' supposedly made by Mr. Fomichev in advance of the Le Bourget meeting, which I have referred to above;

iii) Mr. Abramovich's case that the Devonia Agreement was a sham; or

iv) Mr. Tenenbaum's evidence that the Georgia meeting with Mr. Curtis, as recorded in the Curtis notes, did not occur.

It was further submitted that these were:

> "… all matters of intense dispute between the parties upon which Mr. Fomichev could have given relevant first-hand evidence";

that Mr. Abramovich and his team were on perfectly good terms with Mr. Fomichev; and that the reasons put forward by Mr. Sumption were not good reasons for Mr. Abramovich not having called him.

1161. It was indeed the case that Mr. Fomichev could have given relevant evidence in relation to a number of areas of dispute between the parties. He was based in London and therefore susceptible to a witness summons. Both sides had had some contact with Mr. Fomichev in relation to these proceedings. For example, in the course of the summary judgment proceedings, Mr. Berezovsky had relied upon various statements made by Mr. Fomichev to Mr. Berezovsky's lawyers in 2007, although they had subsequently fallen out; Mr. Abramovich's side had also had some contact with Mr. Fomichev during the course of the proceedings from April 2009 onwards, but the evidence did not demonstrate, contrary to Mr. Rabinowitz's submission, that such contacts had been extensive or that Mr. Fomichev "was willing to assist Mr. Abramovich's team on request". The reasons Mr. Berezovsky gave for not wishing to call Mr. Fomichev were not limited to the fact that the two men had fallen out as a result of the North Shore litigation; Mr. Berezovsky went on to describe in explicit terms how he now regarded Mr. Fomichev as untrustworthy and a liar.

1162. The parties agreed that whether or not the court should draw adverse inferences from the fact that one party had not called a particular witness was heavily dependent on the particular circumstances of the case; one test was whether a party "could not realistically" have been expected to have called the witness in question; see *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324.

1163. Contrary to Mr. Rabinowitz's submissions, which, to my mind, had an air of unreality about them in relation to this point, I conclude that no adverse inference could or should be drawn against Mr. Abramovich for not having called Mr. Fomichev. Apart from the fact that Mr. Fomichev had been Mr. Berezovsky's financial adviser, confidant and agent in all the relevant matters in relation to which he would have been called to give evidence, as Mr. Sumption submitted, it was Mr. Abramovich's case that Mr. Fomichev had been involved in the generation of sham documents for the purposes of laundering Mr. Berezovsky's funds. I see no basis upon which Mr. Abramovich could have "realistically" called Mr. Fomichev as a witness, only for Mr. Sumption to have attempted to suggest to him in chief, in effect, that he was a dishonest liar. Notwithstanding Mr. Rabinowitz's attempt to formulate the matters in respect of which he submitted that adverse inferences should be drawn against Mr. Abramovich, as ostensibly matters which Mr. Abramovich had to prove, the reality was that burden of proof, and the evidential onus, in relation to the critical issues in respect of which Mr. Fomichev's evidence was relevant (e.g. that, under the terms of the Devonia Agreement, Mr. Berezovsky and Mr. Patarkatsishvili sold their interests in Sibneft; that the Curtis notes demonstrated that the two men had an interest in RusAl), lay fairly and squarely on Mr. Berezovsky. I therefore reject the submission that any adverse inferences should be drawn against Mr. Abramovich because, understandably, he chose not to call Mr. Fomichev.

The alleged distribution to Mr. Berezovsky of RusAl profits

1164. The next matter upon which Mr. Berezovsky relied to support his allegation that he and Mr. Patarkatsishvili had an interest in RusAl was the fact that, between 2003 and 2005, two companies associated with Mr. Berezovsky and Mr. Patarkatsishvili,

namely Blue Water Resources Inc and Rich Brown Enterprises Ltd, received $175 million from Mr. Abramovich's companies. Mr. Berezovsky's contention was that these sums were payments of RusAl dividends in respect of his and Mr. Patarkatsishvili's ownership interests in RusAl. This issue in fact corresponded to Issue 22 in the Agreed List of Issues, which was formulated as follows:

> "Were payments of $50 million to Blue Water Resources Inc in 2003, and $125 million to Rich Brown Enterprises Limited from 2003 to 2005, payments of RusAl profits; or were they part of a payment of interest and "commission" in relation to the $1.3 billion?"

1165. The underlying facts relating to this issue were complex and extensively rehearsed in the respective parties' closing submissions. In summary:

i) It appeared not to be in dispute[543] that sums totalling $377.5 million were paid from Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili during the period 2002 to 2004. The dispute between the parties centred on the nature of these payments and whether the $175 million was part of the larger payment of $377.5 million.

ii) It was common ground that, at some stage after the $1.3 billion "pay-off" agreement referred to above was agreed, Mr. Patarkatsishvili approached Mr. Abramovich and asked for some form of further payment to compensate for the commission payments which Mr. Patarkatsishvili and Mr. Berezovsky had been obliged to pay in relation to the $1.3 billion. The only dispute on this issue was the outcome of that approach.

iii) Mr. Abramovich gave evidence that Mr. Patarkatsishvili made his request some time in 2002, when the two men had had a meeting probably in Tbilisi. Mr. Patarkatsishvili asked him for more money on the basis that he and Mr. Berezovsky had not received the full benefit of the $1.3 billion pay-off previously agreed since:

a) it had been paid in a number of instalments over a period of time, with no compensating payment for loss of interest; and

b) a substantial commission had been paid to a Sheikh to "legalise" the transaction.

Mr. Abramovich said that was the first occasion on which he had learnt of the involvement of the Sheikh as the intermediary to transfer the payments made to Western banks. Mr. Abramovich said that, after some negotiation, he agreed with Mr. Patarkatsishvili to pay a further $377.5 million in total, to be made in instalments, in order to compensate him and Mr. Berezovsky in relation to the commission payments and loss of interest. Payments in that total amount were made to companies designated by Mr. Berezovsky and/or Mr. Patarkatsishvili in instalments between mid-2002 and early 2005. In

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[543] See for example pages 266 -267 of Mr. Berezovsky's Second Schedule, reference to paragraphs 1306 (1) and (5) of his written closing submissions. LTB bank statements produced during the course of trial established that the balance of $202.5 million had indeed been paid to Devonia.

cross-examination it was suggested that Mr. Abramovich had made up the meeting and that Mr. Patarkatsishvili had never asked him to pay further amounts by way of commission. That was a somewhat surprising suggestion given that it was Mr. Berezovsky's own evidence that Mr. Patarkatsishvili had spoken to Mr. Abramovich about the topic.

iv) Mr. Berezovsky's evidence was that he and Mr. Patarkatsishvili had discussed the question of asking Mr. Abramovich to make a payment in compensation for these matters, but that Mr. Patarkatsishvili subsequently told him that Mr. Abramovich had refused to make any further payment in relation to the $1.3 billion. He said that the $175 million received by Blue Water Resources and Rich Brown Enterprises represented dividends or profit shares in respect of their aluminium interests. He did not appear to have had any explanation in respect of the balance of the $202.5 million which was subsequently paid.

v) There was no dispute that the payments were made from Rual Trade Limited ("Rual"), which was an aluminium trading company jointly owned (indirectly) by Mr. Abramovich and Mr. Deripaska, which traded with the RusAl group. However, I did not accept the inference which Mr. Berezovsky sought to draw from this fact, namely that the payments represented RusAl profits. Funds from Rual were also used to finance the Devonia payments pursuant to the $1.3 billion pay-off arrangement; but Mr. Berezovsky never suggested that the Devonia payments represented profits due to Mr. Berezovsky and Mr. Patarkatsishvili in respect of their ownership of aluminium assets, simply because Rual was the source of the payment. As was submitted on behalf of Mr. Abramovich, the reality was that Mr. Abramovich made his payments to Mr. Berezovsky and Mr. Patarkatsishvili from whatever cash funds within his businesses were conveniently available at the time. The fact that dividend distributions from Rual were the mechanism of payment did not reflect the reason for the payment; such payments from Rual were not equivalent to dividend payments from *RusAl* in respect of any alleged ownership interest.

1166. I preferred the evidence of Mr. Abramovich in relation to this issue. First, Mr. Berezovsky was unable to give any positive evidence to support his case that the $377.5 million represented payments of RusAl profit shares rather than commission-related payments. He had no knowledge of the profits of RusAl and had made no enquiries about them. He said in his witness statement that

> "I believe that Mr. Abramovich paid profits to Badri and me from our RusAl interest – and I am sure that Badri would have told me if this had not happened – but I do not know the sums or mechanisms involved[544]."

1167. Second, Mr. Berezovsky admitted that the suggestion that the $377.5 million were payments in respect of RusAl profits had not come from him but had been derived from his lawyer's analysis of the documents. As regards the $175m payments, he disclaimed any recollection of them, saying:

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[544] Berezovsky 4th witness statement, paragraph 284.

> "I'm almost sure that this knowledge of Mr. Marino got not from myself directly; maybe he analyse[d the] papers[545]."

Accordingly, Mr, Berezovsky could give no direct evidence on whether or not the payments were indeed commission payments.

1168. Third, it was clear that, on the previous occasion on which Mr. Abramovich had paid substantial sums to Mr. Berezovsky and Mr. Patarkatsishvili which had to be "legalised" in the West, in respect of the purchase of their ORT shares, Mr. Abramovich had in fact agreed to contribute to the commission costs incurred in the process of "legalisation".

1169. Fourth, Mr. Curtis treated the payments in a manner consistent with their having been related to the Devonia transaction: he sought to take the balance of his commission on that transaction (some $4.5 million) from one of them.

1170. Fifth, the timing of the payments supported Mr. Abramovich's account. The payments did not start until after the time of the meeting between Mr. Abramovich and Mr. Patarkatsishvili in 2002. Had Mr. Patarkatsishvili and Mr. Berezovsky been entitled to receive RusAl profit payments, then, on Mr. Berezovsky's case, such profit payments should also have been made in 2000 and 2001. There were no such payments during those years; this was demonstrated by an analysis of the figures in the Bolshoi Balance, and of the evidence of Ms. Panchenko.

1171. Sixth, although a point in Mr. Berezovsky's favour in relation to this issue was the absence of any documentation to support Mr. Abramovich's explanation of the reasons for the payment, the fact was that it was Mr. Berezovsky's own evidence that a meeting had taken place at which Mr. Patarkatsishvili had made a specific request for an additional sum to compensate the two men for their additional expenditure in legalising the $1.3 billion. Thus Mr. Berezovsky's own evidence supported such a purpose for the payment. Whilst I have taken the absence of documentation into account in reaching my conclusion, it does not persuade me to reject Mr. Abramovich's evidence.

1172. Seventh, Mr. Berezovsky relied upon various other attendance notes and documents which he submitted supported his case on this issue. In particular he relied upon communications between Mr. Keeling of Denton Wilde Sapte, in his capacity as trustee of the Itchen Trust, and Mr. Andre De Cort ("Mr. De Cort"), who, at the time, was in-house counsel for Millhouse Capital UK Limited (subsequently MHC Services Ltd, one of Mr. Abramovich's companies). Mr. Keeling was concerned to receive a letter from Mr. Abramovich's companies confirming that the funds which were being paid to Blue Water and Rich Brown were derived from legitimate income, and did not represent the proceeds of crime. For that purpose, Mr. De Cort provided to Curtis & Co a source of funds letter relating to the various dividends which were being paid through the chains of various companies, and ultimately to Blue Water and Rich Brown. He confirmed that:

> "… the source of the funds that will be paid by way of dividends by RuAl Trade Limited are derived from interests it

[545] Berezovsky Day 9, page 128.

> holds in and its involvement in the trading activities of aluminium products."

1173. Certain of the attendance notes of discussions between the two men and Mr. Curtis likewise referred (for example) to the fact that "the funds in question constituted properly earned profits arising from trading activities on behalf of RusAl" (corrected by Mr. De Cort in evidence to RusAl Group). But none of this documentation suggested, and certainly did not unequivocally suggest, that, whatever the source of the payments, the character in which either Mr. Berezovsky or Mr. Patarkatsishvili were receiving the funds was as ultimate beneficial shareholders of shareholdings in RusAl. The letter was directed at demonstrating the legitimate source of the monies paid, not at the capacity in which the ultimate recipients were receiving the funds.

1174. Mr. Berezovsky also, in this context, relied upon a letter dated 18 September 2003 from Mr. Fomichev "writing as the authorised representative of Mr. Arkady Patarkatsishvili" to Mr. Curtis and Denton Wilde Sapte. In this letter, Mr. Fomichev wrote:

> "… the agreed ultimate beneficial ownership of (and consequent entitlement to dividends arising from) Rual and the interests it holds in the trading activities of aluminium products are held as to 25% Mr. Patarkatsishvili and 25% by Mr. Abramovich".

1175. This letter appears (so far as it was possible to tell in the absence of evidence from Mr. Fomichev) to have been occasioned by a proposal, which was ultimately acted upon in July 2004, to vest the second 25% tranche of RusAl in Mr. Patarkatsishvili in order to enable him to explain the receipt by him of substantial sums by way of commission. I address this topic further below. The letter was not copied to Mr. Abramovich (or any of his representatives), and appeared to have been designed to legitimise the funds for the purpose of money-laundering regulations. The letter does not, of course, support any beneficial ownership of Mr. Berezovsky. It treats the whole 25% as belonging to Mr. Patarkatsishvili.

1176. For the above reasons, I conclude that this aspect of the circumstantial evidence does not provide such sufficient support for Mr. Berezovsky's case, that I should reject Mr. Abramovich's direct evidence in relation to the topic.

The sale in 2003 of the first 25% tranche of RusAl shares held by Mr. Abramovich to Mr. Deripaska

1177. In 2003, the RusAl group was restructured. RusAl shares were transferred from the original six offshore companies to a unified holding company, RusAl Holding Limited. RusAl Holding Limited was incorporated on 7 May 2003. It was initially owned on a 50:50 basis by Mr. Abramovich through Madison, a BVI company ultimately owned by Mr. Abramovich, and Mr. Deripaska through Baufinanz, a BVI company ultimately owned by Mr. Deripaska. Save where it is necessary to differentiate, I use the term "RusAl" as referring indiscriminately to the previous RusAl entity and RusAl Holding Limited.

1178. As I have previously mentioned, in September 2003, Mr. Abramovich (through Madison) sold a 25% tranche of RusAl shares to Mr. Deripaska (the purchaser being Baufinanz). As a result, Mr. Deripaska's holding in RusAl increased to 75%. This was effected by two share purchase agreements dated 17 September 2003, the first between Madison and Baufinanz, and the second between various companies respectively controlled by Messrs Abramovich and Deripaska, pursuant to which Madison and Mr. Abramovich's other companies sold a total of 25% of RusAl Holding and RusAl (half of its holding), together with certain other assets, to entities ultimately owned and/or controlled by Mr. Deripaska. The price was $1.825 billion, of which $1.578 billion related to the 25% of RusAl and the balance to other assets. Completion of both agreements took place on 30 September 2003. Neither of the two share purchase agreements said anything in relation to the further 25% stake in RusAl.

1179. On the same date, a Deed of Pre-Emption and Option dated 30 September 2003 ("the Deed of Pre-Emption ") was executed as between Madison and Baufinanz. Pursuant to section 2, Madison granted Baufinanz a right of pre-emption in the event of an offer by a third party, and pursuant to section 3, an option to purchase in the event of a change of ownership, in relation to the rest of Madison's stake in RusAl Holding. In the event that a third party made an offer, Mr. Deripaska could elect either to match that offer, or propose different terms. If Mr. Deripaska's alternative terms were not acceptable, then he either had to match the third-party offer or let the shares go to the third-party. In the event that there was a change of ownership or control, Mr. Deripaska could propose a price for the shares. The parties would then negotiate in good faith. However if, ultimately, the parties could not agree, the matter was to be resolved by expert determination.

1180. At or about the same time, Mr. Abramovich agreed to amendments being made to the corporate constitutions of the companies that were holding RusAl, to remove any right of veto which a minority 25% stake in those companies might otherwise enjoy. At the same time various corporate resolutions were passed, so as to ensure that Mr. Deripaska's nominees were appointed as directors of those companies.

1181. Although Mr. Berezovsky was not involved in any way in the sale of the first 25% tranche of RusAl shares to Mr. Deripaska, and none of the documentation mentioned his name, Mr. Rabinowitz submitted that a number of features surrounding the sale supported Mr. Berezovsky's case that he and Mr. Patarkatsishvili indeed had an interest in 25% of RusAl. Mr. Rabinowitz submitted as follows[546]:

> "1380. In short, it is Mr. Abramovich's case that:
>
> (1) In the summer of 2003 he reached an agreement with Mr. Deripaska to sell the entire 50% stake in RusAl to Mr. Deripaska at a fixed price ($1.825 billion for the first 25% stake plus 2 other assets; and $450 million for the second 25% stake);

[546] Mr. Berezovsky's written closing submissions at paragraphs 1380- 1381.

(2) However, Mr. Deripaska did not have sufficient cash to acquire the entire 50% stake in RusAl in one go;

(3) The agreement to sell the entire 50% stake was therefore not legally documented at that time; instead, all that was legally documented was the sale of the first tranche and an option agreement in respect of the second tranche.

1381. There are, yet again, real difficulties with Mr. Abramovich's explanation which suggest that his evidence on this issue is very unlikely to be the truth. In particular:

(1) His explanation cannot be squared with the evidence Mr. Deripaska previously gave in his litigation with Mr. Michael Cherney as to why it was that the RusAl sales were conducted in two stages.

(2) His evidence cannot be squared with the contemporaneous contractual documentation, suggesting, as it does, that there had been no agreement reached between Mr. Abramovich and Mr. Deripaska in the summer of 2003, regarding either a sale of the second tranche, or an overall sale price for the entire 50% stake in RusAl.

(3) The agreement to sell the entire 50% stake was therefore not legally documented at that time; instead, all that was legally documented was the sale of the first tranche and an option agreement in respect of the second tranche."

1182. Thus, Mr. Rabinowitz submitted that, from a common sense perspective, it was commercially inconceivable that, if Mr. Abramovich really was entitled to dispose of the whole of the 50% RusAl tranche in 2003, he would only have disposed of half the stake (i.e. 25%), leaving himself as an unprotected minority at the mercy of Mr. Deripaska, of whom even Mr. Abramovich said in evidence "like to squeeze his partners". Mr. Rabinowitz submitted that Mr. Abramovich's story about 2003 was bogus, and the far more credible explanation was that the remaining 25% tranche was not Mr. Abramovich's to sell, because it belonged to Mr. Berezovsky and Mr. Patarkatsishvili. That, said Mr. Rabinowitz, was consistent with the evidence Mr. Deripaska had previously given in his litigation with Mr. Michael Cherney as to why it was that the RusAl sales were conducted in two stages, and what had been publicly said in the media "by Mr. Abramovich's own spokesman"; moreover, Mr. Abramovich's evidence could not be squared with the contemporaneous contractual documentation, suggesting, as it does, that there had been no agreement reached between Mr. Abramovich and Mr. Deripaska in the summer of 2003,

regarding either a sale of the second tranche, or an overall sale price for the entire 50% stake in RusAl.

1183. Whilst, arguably, on one analysis, the 2003 sale documentation did not support Mr. Abramovich's case that, in the summer of 2003, he had agreed to sell to Mr. Deripaska the entirety of Madison's 50% interest in RusAl, I nevertheless find, based on both the written and oral evidence of Mr. Abramovich, Mr. Shvidler, Mr. Deripaska and Mr. Bulygin, much of which was heavily challenged in cross-examination, that, in commercial terms, Mr. Abramovich's account of the deal between himself and Mr. Deripaska was correct.

1184. In summary, I find the relevant facts to have been as follows:

i) In February 2003, Mr. Abramovich visited Mr. Patarkatsishvili and told him in general terms that he was thinking of terminating all his joint ventures with Mr. Deripaska and selling out to him. These included not merely RusAl but also joint ventures in a car manufacturing business and an energy business. Although Mr. Abramovich had not made up his mind at this time as to whether he would actually sell out to Mr. Deripaska, their respective management teams were clearly finding it difficult to work together. Mr. Abramovich's reasons for this decision had nothing to do with either Mr. Berezovsky or Mr. Patarkatsishvili. Apart from the fact that his team was finding it difficult to work with Mr. Deripaska's team, Mr. Abramovich took the view that his investment in the aluminium business had paid off sufficiently and he was committed to a new project in the oil industry, upon which he wanted to focus. Mr. Abramovich told Mr. Patarkatsishvili that Mr. Deripaska and he had different understandings about the future development of the business, that he had formed the impression that Mr. Deripaska was "trying to squeeze us out" and that Mr. Deripaska preferred to work "solo" in the sense of wanting to make all the decisions on his own. Mr. Abramovich appreciated that he would have to settle the outstanding question of Mr. Patarkatsishvili's commission, as he had played a significant role in the original acquisition of aluminium as well as providing *krysha* assistance in relation to the problems in the aluminium industry. Mr. Patarkatsishvili was not happy about Mr. Abramovich's intention to leave the aluminium industry as, so Mr. Abramovich explained, Mr. Patarkatsishvili had various ongoing projects in relation to which he hoped to enter further commission. But no suggestion was made by Mr. Patarkatsishvili at the meeting that he, or Mr. Berezovsky had any interest in RusAl shares.

ii) That the settlement of Mr. Patarkatsishvili's outstanding commission was the subject of discussion at this meeting was supported by the fact that in April 2003, Mr. Patarkatsishvili appears to have instructed Mr. Curtis to draft a "subject to contract" "Memorandum of Understanding", as between Mr. Abramovich and Mr. Patarkatsishvili providing for the transfer of the shares in a company owning 25% of RusAl to Mr. Patarkatsishvili, for nil consideration. The prospect of the payment of commission would have been likely to have raised in Mr. Patarkatsishvili's mind the usual problem of "legalisation" in the face of Western money-laundering regulations, and it is probable that the Memorandum was produced with that aim in mind.

iii) The Memorandum recited that:

> "50% of the registered and beneficial interest in the unencumbered issued share capital of [RusAl] is registered in the names of companies or entities controlled by [Mr. Abramovich]" [Emphasis added.]

I comment that no reference was made to any beneficial ownership held in such shares by Mr. Patarkatsishvili or Mr. Berezovsky, which, on Mr. Berezovsky's case, the two men clearly had at this stage. The Memorandum went on to provide that Mr. Abramovich would procure that the entire issued share capital of a company owning the registered and beneficial interest in 25% of the total issued share capital of RusAl, would be transferred for a nominal consideration to Mr. Patarkatsishvili or such third party as he should nominate; and that thereafter Mr. Patarkatsishvili would procure that such nominee would sell the 25% stake in RusAl to such other company, corporation or entity as Mr. Abramovich should nominate for a total aggregate sum in $, the amount of which was left blank; subject to a condition that the purchaser would simultaneously enter into a share option agreement permitting Mr. Patarkatsishvili's nominee to re-purchase up to 12.5% (of the issued share capital of RusAl) at the same cost for a period of time expiring on the fifth anniversary of the share option agreement.

iv) But whatever the intent of the Memorandum so far as structuring the payment of a fee to Mr. Patarkatsishvili, and presenting it as a share sale transaction, was concerned, and insofar as anything can be derived from a draft document that was not shown to, or negotiated with Mr. Abramovich's side, what was of relevance in relation to the document was that:

a) it did not mention or refer to Mr. Berezovsky; and

b) it was inconsistent with either man having any beneficial interest in RusAl shares in April 2003. That was not merely because of the absence of any reference to such interest in the recital, but also because the operative provision relating to the transfer did not suggest that the transaction was merely vesting legal title in an existing beneficial owner of either the RusAl shares themselves, or of the shares of the Abramovich company holding such shares.

v) According to the evidence of both Mr. Abramovich and Mr. Deripaska, supported by that of Mr. Bulygin and Mr. Shvidler, in the summer of 2003 a commercial deal was orally agreed between the two men personally that Mr. Deripaska would buy Mr. Abramovich out from all their various joint ventures in a number of businesses for $2.3 billion. But Mr. Deripaska was unable to raise financing from banks in such a large sum at that stage. He had been able to raise only about $1.9 billion in funds. Mr. Abramovich described it as follows in cross-examination:

> "We agreed with Mr. Deripaska that we'll finish our relationship because the relationship between our managing teams were very stressed, we knew it wouldn't lead to anything

good and that would put an end to our joint business. Our joint business consisted of several assets: RusAl was one of them, Ruspromavto was another and Irkutskenergo was another. Oleg initially wanted to acquire RusAl and he wanted to acquire the rest when he would get money. So he would buy the rest, acquire the rest later.

But because these assets, Ruspromavto and Irkutskpromavto (sic), I didn't need that at all.

Irkutskenergo was acquired for RusAl. That is the power station that generates electricity for the aluminium smelter. Ruspromavto is just a collection of car plants, it was a hobby for Oleg. You know, it was a hobby for him and, as a mate, I agreed that I would participate in that with him. It wasn't much money, but I never thought that this business would grow into General Motors; I didn't see that future for this business from the very beginning. But I supported Oleg in the initiative, in this vehicle manufacture, as much as I could.

And when the question arose that we would finish our joint activity, he said -- he proposed, "Buy RusAl and let's leave the rest". And I said, "No, no, no, let's agree that I would sell everything to you but..." So we agreed that 50 per cent of RusAl would be sold but that we would structure the deal in the following way: initially he would get 25 per cent of RusAl and all the other stuff we held together, Irkutskenergo, Ruspromavto; and later, when he raises the funds, he'd get the second part of RusAl for $150[547] million on condition that he manages to pull that deal within a year[548]."

vi) Mr. Deripaska's evidence on this topic included the following passage:

"A. Sorry, and the total amount, the total price of the transaction, if I remember correctly, for all the businesses was about US$2.3 billion, a little bit more than that, a little bit more than US$2.3 billion. And so, therefore, those were difficult negotiations in terms of what assets will be bought out by myself at the initial stage and that's why it was structured the way it was done.

Q. Mr. Deripaska, I suggest to you the reason that at that stage you did not acquire a full 50 per cent from Mr. Abramovich was because you were told that only 25 per cent was available. Do you dispute that?

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[547] The reference to "$150 million" was clearly an error, whether of transcription or otherwise, for a figure of $450 million.

[548] Day 23, pages 74- 76.

A. No, the reason is that I simply did not have sufficient funds available to me, I did not find sufficient funds immediately, and I can say that because I was actually handling that transaction[549].”

vii) As he also explained, the car manufacturing business and the energy business were “highly politically sensitive”, which was another reason why Mr. Abramovich was concerned to ensure their immediate sale and not leave those assets over to the second stage:

“Q. However full your explanation may be now, Mr. Deripaska, the reason you didn’t buy the full 50 per cent was because you were told that only 25 per cent was available. That is right, is it not?

A. Well, what I can do is only reiterate that, for me, the negotiations with banks were very difficult and, as a result of that, I was able to raise about 1.9 -- almost $1.9 billion, and Abramovich then asked me to first put an end to our relationship with respect to the power business and the car manufacturing business because they were highly politically sensitive businesses and plants, if I can put it that way. And when he entered that complex oil-related deal he did not want to have any conflict of interest with the authorities.”[550]

Given the absence of financing, Mr. Abramovich was not prepared, at that stage, to sell the second 25% of RusAl to him, and leave the purchase price outstanding. So the two men agreed that the aluminium business RusAl would be divided and sold in two parts instead. The price for the interests comprising the first part of the sale was agreed at $1.865 billion and the price of the second part (the remaining 25% tranche of RusAl shares) was agreed at $450 million.

1185. It was submitted on behalf of Mr. Berezovsky that the account given by Mr. Abramovich and Mr. Deripaska was “quite obviously untrue” and that neither of them had any satisfactory explanation in cross-examination for the fact that the Deed of Pre-Emption between Madison and Baufinanz, did not contain a fixed price for the second 25% tranche of RusAl shares and did not give a right to Mr. Deripaska to purchase the shares at his discretion. It was also submitted that Mr. Deripaska had no satisfactory explanation for what he had said in his witness statement in the Cherney litigation.

1186. As to the first point, I accept, based on the evidence of Mr. Hauser, the solicitor acting for Mr. Deripaska who drafted the Deed of Pre-Emption, that neither Mr. Abramovich’s nor Mr. Deripaska’s business representatives conveyed to the lawyers, who documented the arrangement, the essential commercial terms of the deal, namely that Mr. Deripaska had a right to purchase a second 25% tranche at a

549 Day 29, pages 87-88.
550 Day 29, page 89.

fixed price of $450 million; and that if they had done so, the Deed of Pre-Emption would have been drafted very differently. However, although the point clearly raised serious questions about whether Mr. Abramovich and Mr. Deripaska were indeed telling the truth about their agreement, I am satisfied, having heard both men in the witness box, and notwithstanding the slight inconsistencies in their evidence, and the absence of any written record, that they did indeed reach the commercial deal to which both men referred. Moreover, as Mr. Malek pointed out in his closing submissions, to a certain extent, at least, the documentation reflected the agreed but, staged, sale structure; it was Mr. Abramovich who wanted to exit his partnership with Mr. Deripaska, not Mr. Deripaska who wanted to purchase the shares from Mr. Abramovich. A right of pre-emption given to Mr. Deripaska in the event that Mr. Abramovich found an alternative purchaser (rather than a right to Mr. Deripaska to control the timing of the sale) was consistent with that. Moreover Mr. Deripaska was protected by the fact that he had 75% control of RusAl, with no minority blocking rights in the various holding companies. Mr. Abramovich had been compensated by the substantial control premium paid for the first 25% tranche.

1187. I find there to have been nothing surprising or questionable in the fact that Mr. Abramovich agreed to the alterations to the relevant provisions relating to the exercise of minority rights in the companies owning RusAl shares, once the sale of the first 25% tranche had been agreed. It was clear from evidence that effective control of RusAl's management and business had passed to Mr. Deripaska at this stage. As Mr. Abramovich himself described, the two men agreed to terminate a previously existing shareholders' agreement governing their activities as shareholders in RusAl, at the first stage of the transaction so that Mr. Deripaska would essentially acquire all management rights for RusAl immediately upon the sale of the first 25% tranche. It was not surprising, in those circumstances, that a substantial control premium was paid by Mr. Deripaska for the first 25% tranche. Indeed, that appeared to me to have been consistent with the commercial deal arrived at between the two principals rather than inconsistent with it. There was certainly no evidence to support the assertion made in paragraph 1399 of Mr. Berezovsky's written closing submissions that:

> "1399. Such conduct on the part of Mr. Abramovich is, however, entirely consistent with Mr. Abramovich seeking to appropriate for himself (and his partner Mr. Shvidler) a substantial control premium for the sale of the first 25% stake in RusAl, whilst leaving his remaining partners - the disgraced oligarchs in exile - in the lurch and at the mercy of Mr. Deripaska."

1188. As to the second point, I consider that Mr. Rabinowitz's argument attached too much emphasis to the statement made by Mr. Deripaska in a witness statement in a jurisdiction dispute with Mr. Cherney. The passage read as follows:

> "Originally I made an offer in 2003 for Mr. Abramovich's full 50% interest, but I was told that only 25% was available. I never heard from Mr. Berezovsky at that time or subsequently with any complaint about the transaction."

I comment that the witness statement did not refer to the reason for the "unavailability" of the remaining 25% as being the fact that it was owned, or subject to rights claimed over it, by a third party. As Mr. Deripaska explained, the remaining 25% was not available at that stage, because Mr. Abramovich was not prepared to sell it on terms that the purchase price was left outstanding, and Mr. Deripaska did not have the funds to purchase it. Accordingly I do not consider that this witness statement undermines Mr. Abramovich's and Mr. Deripaska's account.

1189. I attach no weight to the press articles relied upon by Mr. Berezovsky.

1190. In the circumstances I conclude that the evidence relating to the sale of the first 25% of RusAl shares to Mr. Deripaska does not support Mr. Berezovsky's claim that he had an interest in RusAl.

The sale in 2004 of the second 25% tranche of RusAl shares to Mr. Deripaska via Cliren

1191. Mr. Berezovsky contended that the sale of the second 25% tranche of RusAl shares supported his case that he had an interest in RusAl. In order to understand Mr. Berezovsky's arguments in relation to this issue it is necessary to set them out in some detail. In his written closing submissions, the argument was put as follows[551]:

> "(1) Throughout the second RusAl sale, everyone proceeded on the basis that Mr. Abramovich was not the ultimate beneficial owner of the remaining 25% stake in RusAl.
>
> (2) Indeed, throughout the second RusAl sale, everyone involved in the second RusAl sale transaction recognised that there was at least one, if not two, other beneficial owners of the remaining 25% stake in RusAl: one of whom was certainly Mr. Patarkatsishvili.
>
> (3) Moreover, a number of the participants in the second RusAl sale were clearly of the view that Mr. Abramovich was either a trustee, or at the very least acting in a fiduciary capacity vis-à-vis the real beneficial owner or owners.
>
> (4) The only confusion (if there really was any) was as to whether Mr. Berezovsky was the other beneficial owner, alongside Mr. Patarkatsishvili.
>
> (5) In particular:
>
> (a) Mr. Abramovich's team were of the view that Mr. Berezovsky was also a beneficial owner, alongside Mr. Patarkatsishvili: but were reluctant to do anything further to document Mr. Berezovsky's ownership, in particular

[551] Paragraph 1418 of Mr. Berezovsky's written closing submissions.

because of representations previously made to banks. They therefore proposed a more limited acknowledgement from Mr. Abramovich: that whomever Mr. Patarkatsishvili said was the beneficial owner was in fact the beneficial owner; coupled with a warranty from Mr. Patarkatsishvili that he was the sole beneficial owner. In this way, they hoped to transfer the risk of the warranty being proved false (in the event that Mr. Berezovsky did raise a successful claim), from Mr. Abramovich to Mr. Patarkatsishvili.

(b) Mr. Deripaska's team were originally instructed that Mr. Berezovsky was also a beneficial owner, alongside Mr. Patarkatsishvili. However, they were prepared to live with the acknowledgement from Mr. Abramovich, and the warranty from Mr. Patarkatsishvili that he was the sole beneficial owner. In doing so, however, Mr. Deripaska's representatives made it quite clear (in e-mails saying as much) that they had not made any enquiries into the matter, that they were assuming that the position with regard to Mr. Berezovsky had been resolved one way or another, and that they would not cap Mr. Patarkatsishvili's liability in the event that the warranty proved untrue.

(c) Mr. Patarkatsishvili's team clearly also understood that Mr. Berezovsky was a beneficial owner, alongside Mr. Patarkatsishvili, and entitled to 50% of the RusAl proceeds that would flow through the bank accounts to Mr. Berezovsky. However, in order to get the deal done (and as already had been suggested by Mr. Curtis, as recorded in the Curtis Notes of 23 August 2003), they were prepared to structure the transaction so that it appeared that only Mr. Patarkatsishvili was the beneficial owner if that made it easier for the other parties. They therefore went along with the proposal from Mr. Abramovich's representatives (i.e. the acknowledgement and the warranty referred to above). Because there were clear risks attached to this, however, prior to closing, Mr. Patarkatsishvili's team required

> Mr. Patarkatsishvili to sign off on an official release to them, in which Mr. Patarkatsishvili indicated that he fully understood the risks that he was undertaking in the event that the warranty he was giving (about Mr. Berezovsky not being involved) was untrue."

1192. In Mr. Berezovsky's written opening submissions, and in cross-examination of certain witnesses, the suggestion was made that those people who were involved in the sale of the second 25% tranche of RusAl shares, deliberately, and dishonestly, tried to "airbrush" Mr. Berezovsky out of the documentation relating to the transaction, at the insistence of Mr. Abramovich and his representatives. What was effectively a conspiracy allegation was not proceeded with in Mr. Berezovsky's closing submissions, where the argument was presented in the somewhat modified form. This was to the effect that, rather than admit the truth that he was not the beneficial owner of a 25% stake in RusAl, but that Mr. Patarkatsishvili and Mr. Berezovsky were the true owners of that stake, Mr. Abramovich was forced to argue that he was prepared to execute false documents in order to deceive Western banks as part of a money-laundering conspiracy to enable Mr. Patarkatsishvili to transfer funds into the West[552].

1193. The evidence relating to this issue was comprehensively set out in the parties' written closing submissions, and in extensive detail. I should acknowledge, in particular, the assistance provided by a helpful and focused schedule at Annex III to the Family Defendants' submissions.

1194. I now turn to consider that evidence and to set out my findings and conclusions in relation to it. Before I do so, I make two points. First, it is important to bear in mind, when considering whether the events relating to the sale of the second tranche indeed supported Mr. Berezovsky's case that he had an interest in RusAl shares, that in these proceedings such an interest could only be demonstrated on the basis of the alleged 1995 Agreement, the alleged 1999 RusAl Agreement, the contribution of his alleged Sibneft profits to the acquisition of the pre-merger aluminium assets, and/or what Mr. Berezovsky alleged was agreed at the Dorchester Hotel meeting. The court in these proceedings is not addressing the issue whether Mr. Berezovsky had some interest as a result of, or under, a bilateral partnership agreement or other private arrangements with Mr. Patarkatsishvili extending to all or some of their business assets. Second, it is not necessary for me to rehearse every single evidential point raised on behalf of Mr. Berezovsky and I do not do so; however, I have taken them into account in reaching my conclusions as set out below.

Findings in respect of the evidence relating to the sale of the second 25% tranche of RusAl shares

1195. There was no dispute that the contractual documents of transfer, whereby Mr. Deripaska acquired the second 25% tranche of shares in RusAl, <u>on their face</u> show that:

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552 Page 46, reference paragraph 449 of Mr. Berezovsky's First Schedule.

i) the second 25% tranche was transferred by Mr. Abramovich's company Madison to a BVI company, ultimately controlled by Mr. Patarkatsishvili, called Cliren Investment Limited ("Cliren");

ii) Cliren then sold the tranche to Mr. Deripaska's holding company, Eagle; and

iii) as part of the transaction, Mr. Patarkatsishvili represented and warranted to RusAl and Eagle that he was the sole and beneficial owner of the RusAl shares transferred.

1196. I now set out my findings as to the facts leading up to the conclusion of the contractual documentation of these arrangements.

1197. Following their discussion in February 2003, Mr. Abramovich visited Mr. Patarkatsishvili in Georgia in October 2003. He told Mr. Patarkatsishvili about the sale of the first 25% tranche of RusAl to Mr. Deripaska, which had taken place in September 2003. Mr. Abramovich explained that, although he had officially sold only 25% of his RusAl shares, he had in reality agreed to sell out everything to Mr. Deripaska and had essentially now exited the aluminium business. Mr. Patarkatsishvili was upset about this, because he had wanted Mr. Abramovich to stay involved in the aluminium business as Mr. Patarkatsishvili had hoped to act as an "enabler" on a number of other deals, so he saw it as a lost opportunity for future business. As in February 2003, there was no mention or assertion by Mr. Patarkatsishvili that he owned interests in RusAl or the pre-merger aluminium assets. There was no issue as between the two men that Mr. Patarkatsishvili had indeed earned his fee for helping Mr. Abramovich acquire the pre-merger aluminium assets and that it would be considerably more than the "floor" price of $115 million which they had previously agreed. As an opening move in the negotiations, Mr. Patarkatsishvili asked Mr. Abramovich for $700 million; Mr. Abramovich counter-offered with a figure of $400 million, and ultimately, either at the meeting or thereafter, they compromised on a figure of $540 million for what Mr. Abramovich referred to as Mr. Patarkatsishvili's "cut". That figure was subsequently increased to $585 million for reasons which Mr. Abramovich was not able to recall. He explained that it was typical of Mr. Patarkatsishvili that, even in their last transaction, Mr. Patarkatsishvili managed to get the deal renegotiated so that he ended up receiving more than they had originally agreed.

1198. The reason why Mr. Abramovich agreed to pay such a substantial sum to Mr. Patarkatsishvili reflected the fact that the aluminium holdings had been an extremely successful deal for Mr. Abramovich, and that Mr. Patarkatsishvili had made that possible; first by bringing about the original acquisition of the assets, and secondly because of the valuable assistance which Mr. Patarkatsishvili had in fact provided in connection with the aluminium business. Mr. Abramovich also explained that there was his own reputation to maintain, as a person who kept his end of the bargain and that, given the history of their relationship and the services Mr. Patarkatsishvili had provided, he wanted to end his *krysha* relationship with Mr. Patarkatsishvili on a friendly footing. No mention was made during the course of this discussion about Mr. Berezovsky expecting to receive any money for alleged services in relation to RusAl or in relation to the aluminium business in general.

1199. At some subsequent stage, either in late 2003 or early 2004, he and Mr. Patarkatsishvili discussed what Mr. Abramovich referred to as the "legalisation" of Mr. Patarkatsishvili's remuneration; the two men agreed that Mr. Abramovich would "make [Mr. Patarkatsishvili] the owner" of Mr. Abramovich's remaining 25% tranche of RusAl shares as soon as Mr. Deripaska was prepared to purchase the second tranche, with a view to the shares being immediately sold to Mr. Deripaska. Mr. Abramovich was well aware that Mr. Patarkatsishvili was particularly keen to receive the money into Western bank accounts and that, in order to do so, he had to satisfy the anti-money-laundering and other requirements of Western banks. It is probable that Mr. Patarkatsishvili suggested the proposal whereby RusAl shares would be transferred into his name. Mr. Abramovich appreciated that Mr. Patarkatsishvili could not just receive such a large amount of cash with no lawful explanation for its receipt; but, although Mr. Abramovich was not certain when it would be possible to close the deal with Mr. Deripaska, he thought that the transaction would present an opportunity to make a large payment to Mr. Patarkatsishvili in a way that would avoid the need to use an intermediary to transfer the funds. Mr. Abramovich told Mr. Patarkatsishvili that it would be necessary to discuss the proposal with Mr. Deripaska, who, he anticipated, because of his distrust of Mr. Patarkatsishvili, would not necessarily be keen on participating in such an arrangement.

1200. Mr. Patarkatsishvili could not travel to Russia to conduct the necessary face-to-face negotiations with Mr. Deripaska and Mr. Abramovich. In addition, he did not have a sufficiently good relationship with Mr. Deripaska to negotiate directly with him. For these reasons, in early 2004, he asked one of his closest friends, Mr. Anisimov, to participate in the negotiation process with Mr. Deripaska and Mr. Abramovich on his behalf. Mr. Patarkatsishvili explained to Mr. Anisimov that he was owed substantial sums by Mr. Abramovich and that this debt was to be settled from the sale proceeds of the second 25% tranche of RusAl shares, which was to be sold to Mr. Deripaska. Mr. Anisimov had a good relationship with both Mr. Abramovich and Mr. Deripaska and Mr. Patarkatsishvili trusted him. Mr. Patarkatsishvili agreed to remunerate Mr. Anisimov for his services and, at the same time, to fulfil what apparently was an outstanding promise on Mr. Patarkatsishvili's part to compensate Mr. Anisimov for the low sale price which the latter had received for the transfer of his interests in the pre-merger aluminium assets.

1201. Mr. Deripaska was not entirely happy about the prospect of Mr. Patarkatsishvili being involved in the transaction. However, he was prepared to go along with Mr. Abramovich's proposals for commercial reasons, since, according to Mr. Abramovich, it was important for Mr. Deripaska to acquire the RusAl shares for $450 million. On the face of the contractual documents, of course, there might have been an opportunity for Mr. Abramovich to increase the price. Unknown to Mr. Abramovich at the time, Mr. Patarkatsishvili apparently was paid an extra $15 million by Mr. Deripaska.

1202. In the following year, a working group was formed on Mr. Abramovich's side to negotiate the terms of the sale to Mr. Deripaska of the second 25% tranche. It included Mr. Tenenbaum, Ms. Panchenko, Ms. Khudyk and (from 8 June 2004) Mr. De Cort. Mr. Deripaska was represented by a Mr. Mishakov and Mr. Hauser, a solicitor at Bryan Cave. Mr. Anisimov, acting on behalf of Mr. Patarkatsishvili,

instructed his then senior adviser, Mr. Streshinsky, to oversee the structural and legal aspects of the deal. At an early stage, Mr. Streshinsky instructed a corporate lawyer at Akin Gump, a Mr. Faekov, to assist him. Contrary to the assertion made in Mr. Berezovsky's written opening submissions, Mr. Anisimov was not also acting on Mr. Berezovsky's behalf in the transaction. I accept Mr. Anisimov's and Mr. Streshinsky's evidence, supported in the event by that of Mr. Berezovsky, that Mr. Anisimov and Mr. Streshinsky were only acting on behalf of Mr. Patarkatsishvili.

1203. The detailed negotiations took place mainly between 9 June 2004 and 20 July 2004. A number of draft agreements and memoranda were circulated. Mr. Berezovsky, as he accepted in evidence, played no direct part in the negotiations. He was not shown the transaction documents either in draft or as executed. Mr. Anisimov and his team took their instructions from Mr. Patarkatsishvili and Mr. Patarkatsishvili alone. Mr. Berezovsky gave no instructions to Mr. Anisimov or his team and had no contact with them. I accept Mr. Anisimov's evidence that he understood that he was acting solely on behalf of Mr. Patarkatsishvili and that Mr. Berezovsky was not involved and did not have any interest in the 25% RusAl stake, or in the proceeds of its sale.

1204. However, Mr. Berezovsky heard about the proposed sale. He told *Vedomosti*, in an interview on or about 2 June 2004 that he was the beneficial owner of the 25% RusAl stake still held by Mr. Abramovich's companies, that he disapproved of the sale and would go to court if necessary. A similar article also appeared in the *Moscow Times* on 3 June 2004. This public assertion by Mr. Berezovsky disrupted the negotiations. It gave rise to the potential problem, so far as Mr. Deripaska's advisers were concerned, that, after the sale had taken place, there might be a challenge to the transaction by Mr. Berezovsky. That had a significant influence on the form of the contractual documents ultimately agreed. However, I find, contrary to Mr. Berezovsky's assertions, that the form of the contractual documentation was not the result of the lawyers airbrushing Mr. Berezovsky out of the picture; rather it was the result of the lawyers, having received instructions from both Mr. Abramovich and Mr. Patarkatsishvili that Mr. Berezovsky had never been in the picture in the first place, needing to address the problem of his public assertion of interest in the 25% RusAl stake. This they did by including express warranties, representations and indemnities in the sale documentation to protect Mr. Deripaska.

1205. The contractual documents relating to the sale by Mr. Abramovich's holding company, Madison, of its stake in RusAl Holding, were all dated or purportedly dated 20 July 2004 and were as follows:

i) A Deed of Option Waiver was entered into as between Madison and Mr. Deripaska's holding company, Eagle. Under this instrument, Eagle consented to the transfer by Madison of 12,500 shares (the second 25% tranche) in RusAl Holding and the business interests represented thereby, to Cliren. It was agreed that, upon completion of the transfer, the Deed of Pre-Emption dated 30 September 2003 between Madison and Eagle would be terminated.

ii) A Deed of Settlement was entered into as between Madison and Cliren. Under this instrument Madison transferred the 12,500 shares in RusAl Holding to Cliren. This was said to be in consideration of, inter alia, various representations and warranties for releases in respect of the "participation" in

the purchase of the underlying aluminium assets for "facilitating or procuring the contribution of substantial assets and value" to RusAl, its shareholders and predecessors.

iii) Madison and Cliren entered into a Deed of Accounting and Release (Dividends) pursuant to which Madison agreed to pay Cliren $135 million in instalments, commencing with a payment of $90 million within 90 days. This was said to be in consideration of certain releases granted by Cliren to Madison.

iv) A Deed of Release was made between Mr. Patarkatsishvili and Mr. Abramovich. Under this instrument, each of them released the other and their respective affiliates and associated persons (as defined) from any and all obligations they might have to each other in respect, inter alia, of any rights, title or interest they might have to, or in respect of, any shares or securities in RusAl Holding or any company in which RusAl Holding had a direct or indirect majority shareholding or equity participation.

v) A share purchase and sale agreement was made between Eagle and Cliren. Under this instrument Eagle agreed to buy from Cliren the 12,500 shares in RusAl Holding for $450 million.

vi) A Deed of Guarantee was made between Mr. Patarkatsishvili and Eagle. Under this instrument Mr. Patarkatsishvili guaranteed the performance by Cliren of its obligations under the share purchase and sale agreement with Eagle.

vii) A Beneficial Owner Deed of Release was made between Mr. Patarkatsishvili (designated as the "Beneficial Owner"), Cliren, RusAl Holding and Eagle. Under this instrument, Mr. Patarkatsishvili represented and warranted that he was the sole and beneficial owner of the RusAl shares. Mr. Patarkatsishvili and Cliren, and their respective affiliates and associated persons, released RusAl Holding and Eagle and their affiliates and associated persons, inter alia, from any and all claims which they might have in respect of any shares or securities in RusAl Holding or any of its affiliates or other persons connected to RusAl Holding (as defined to include RusAl or any RusAl business), or any claim arising out of or in connection with the purchase by them of the "25% interest in the joint venture" currently represented by the shares in RusAl Holding.

viii) A Deed of Acknowledgement was made between Mr. Abramovich and Mr. Deripaska. Under this instrument Mr. Abramovich acknowledged to Mr. Deripaska that in relation to the shares in RusAl Holding and the "Business Interests" represented thereby (as defined in the Beneficial Owner Deed of Release) he had only had discussions, arrangements and understandings with, and he dealt only with Mr. Patarkatsishvili, and no one else. Accordingly, whoever Mr. Patarkatsishvili identified in the Beneficial Owner Deed of Release as the beneficial owner of the shares and the business interests represented thereby, to the best of Mr. Abramovich's knowledge and belief must be the beneficial owner thereof.

1206. The effect of these transactions was that the second 25% RusAl tranche passed to Eagle, via Mr. Patarkatsishvili's company, Cliren. Mr. Patarkatsishvili received the $585 million commission agreed with Mr. Abramovich:

i) $450 million derived from the sale to Eagle of the 25% tranche that Madison had transferred to Cliren for that purpose; and

ii) the balance of $135 million was paid as a purported dividend under the Deed of Accounting and Release. The $135 million was not in fact a dividend. It was a balancing figure required to make up the excess of the agreed commission over the amount which Mr. Deripaska was willing to pay for the shares. It enabled Mr. Patarkatsishvili to document the full $585 million when it was paid into Cliren's account.

1207. The contractual documentation on its face was therefore wholly inconsistent with Mr. Berezovsky having had any interest in the RusAl shares based on the claims made in this action. For that reason Mr. Rabinowitz relied upon correspondence and other documents generated during the early stages of the negotiations for the transaction which, he said, demonstrated that there were two beneficial owners of the RusAl shares, and that those two persons were Mr. Berezovsky and Mr. Patarkatsishvili.

1208. However before turning to that correspondence, I address a point made by Mr. Rabinowitz in relation to the warranties given by Mr. Patarkatsishvili in the Beneficial Owner Deed of Release, and the confirmation of those warranties given by Mr. Abramovich in the Deed of Acknowledgement entered into with Mr. Deripaska. In the Beneficial Owner Deed of Release Mr. Patarkatsishvili gave a warranty of historic title in relation to the RusAl shares as from 15 March 2000, to the date of completion, namely July 2004. The warranty was in the following terms, Mr. Patarkatsishvili being "the Beneficial Owner", the "Purchaser" being Eagle and "the Company" being RusAl Holding:

> "The Beneficial Owner represents and warrants to the Purchaser and the Company that as of Completion:
>
> 3.1.1 during the Period, the Beneficial Owner was the sole and ultimate beneficial owner of the Business Interests; and
>
> 3.1.2 such Business Interests were not held by the Beneficial Owner for the benefit of any other Person and no Encumbrances or Claims were imposed or asserted in respect of any such Business Interests during the Period."

1209. In the Deed of Acknowledgement Mr. Abramovich represented to Mr. Deripaska that, in relation to the RusAl Holding shares (including predecessor shares) and Business Interests represented thereby as defined, he had "only had discussions, arrangements and understandings with, and he only interacted and dealt with the Beneficial Owner" (i.e. Mr. Patarkatsishvili); and that, accordingly, whoever Mr. Patarkatsishvili had said in the Beneficial Owner Deed of Release was the beneficial owner of the RusAl Holding shares, predecessor shares and the Business Interests represented thereby, to

the best of Mr. Abramovich's knowledge and belief "must be the beneficial owner thereof". Whilst these warranties or representations were clearly inconsistent with Mr. Berezovsky having had any beneficial interest in the RusAl shares, they were clearly inconsistent on their face with Mr. Abramovich's case that Mr. Patarkatsishvili had had no interest in the RusAl Holding shares, or the previous RusAl shares, other than that interest which was specifically created under the Deed Of Settlement as between Madison and Cliren, under which Madison transferred the 12,500 shares in RusAl holding to Cliren. The warranties were also on their face inconsistent with the evidence given by Mr. Abramovich, Mr. Shvidler and Mr. Deripaska about the Dorchester Hotel meeting and the arrangements that led to the acquisition of the pre-merger aluminium assets.

1210. Mr. Rabinowitz placed great reliance on this point; he submitted that it was inconceivable that Mr. Abramovich would have agreed to give what, on Mr. Abramovich's case, was clearly an untrue warranty, for the dishonest purpose of assisting Mr. Patarkatsishvili to persuade Western banks that the substantial commission payments were in fact the proceeds of the sale of RusAl shares owned by Mr. Patarkatsishvili. Mr. Rabinowitz submitted that the reality was consistent with the warranties, namely that Mr. Abramovich never was the sole beneficial owner of the 25% stake in RusAl, but rather that he held the stake for and on behalf of Mr. Berezovsky and Mr. Patarkatsishvili.

1211. I do not accept that submission. Whilst I have carefully considered it, in the ultimate analysis the evidence does not provide any sufficient reason why I should not accept the clear evidence of Mr. Abramovich in relation to Mr. Patarkatsishvili's participation in the aluminium transactions, and his, and Mr. Deripaska's, evidence in relation to the Dorchester Hotel meeting. The reason why the warranty was drafted in that way was extensively explored in the evidence of Mr. Hauser, a witness who was called on subpoena on behalf of Mr. Abramovich. He gave a clear explanation as to why he believed, whether rightly or wrongly matters not, that he needed an historic representation and warranty from Mr. Patarkatsishvili as to beneficial ownership going back to 15 March 2000, so as to remove the possibility that some third party:

> "… might show up, claim to have had an interest some time during that period, and then had asserted a claim against Mr. Deripaska relating to the management of RusAl at that time[553]."

His evidence made it perfectly clear that his insistence on including such a warranty was not because he believed that Mr. Berezovsky had any such interest, but rather because he did not know what the precise position was and wanted watertight contractual protection for his clients. Further, Mr. De Cort explained that these matters were documented in separate agreements between principals solely for the purpose of risk allocation, given the claims had been made publicly by Mr. Berezovsky; and it was not anticipated that the Deed of Acknowledgement or the Beneficial Owner Deed of Release would need to be shown to third parties such as banks. What was required for the purposes of anti-money-laundering compliance requirements would have been the documents showing Cliren's entitlement to, and sale of, the RusAl shares.

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553 See generally Day 31, pages 90-92.

1212. Mr. Berezovsky claimed that the warranty in the Beneficial Owner Deed of Release that Mr. Patarkatsishvili was the sole beneficial owner of the RusAl shares was known by Mr. Patarkatsishvili to have been untrue at the time it was given. As I have already quoted above, his case was also that "Mr. Abramovich's team were of the view that Mr. Berezovsky was also beneficial owner" of a 25% RusAl stake; and that Mr. Anisimov and Mr. Streshinsky knew that Mr. Berezovsky had a beneficial interest in RusAl. In particular, in relation to the negotiations for sale of the second 25% tranche, it was asserted that, given Mr. Streshinsky's alleged knowledge of Mr. Berezovsky's beneficial interest, "… it would have been astonishing if Mr. Anisimov was not aware of the position". In those circumstances, where Mr. Berezovsky has relied upon his allegations about Mr. Anisimov's alleged knowledge as part of his case, and where Mr. Streshinsky was cross-examined on the topic, it is appropriate, as Mr. Malek submitted, that I should make findings as to Mr. Anisimov's knowledge, notwithstanding Mr. Rabinowitz's submissions to the contrary. It will then be a matter of argument in the Chancery proceedings as to whether, and if so to what extent, possibly based on different evidence, Mr. Berezovsky can pursue the point.

1213. Mr. Anisimov's evidence was to the following effect: that during the negotiations for this agreement, which he conducted with Mr. Deripaska on Mr. Patarkatsishvili's behalf, Mr. Deripaska had asked him whether Mr. Patarkatsishvili was the only principal involved in the deal and whether Mr. Berezovsky had any sort of connection with the transaction; that question had plainly been provoked by Mr. Berezovsky's recent statements to the press; when Mr. Anisimov raised this query with Mr. Patarkatsishvili, he was assured by him that Mr. Berezovsky "was not anywhere near the deal"; Mr. Anisimov said that he told Mr. Deripaska this. Mr. Deripaska had no recollection of such a conversation[554], which was not surprising given the passage of time. I accept Mr. Anisimov's evidence in this respect. None of this evidence was expressly challenged, although by implication it was, given the nature of Mr. Streshinsky's cross-examination.

1214. Mr. Streshinsky, who was also involved in these negotiations on Mr. Patarkatsishvili's behalf, also gave evidence to the effect that Mr. Patarkatsishvili specifically confirmed to him the accuracy of the position stated in the warranty, at a meeting between the two men in Georgia between 7 and 9 July 2004. During this visit, Mr. Streshinsky explained the overall structure of the transaction and took Mr. Patarkatsishvili through the key draft transaction documents. He specifically highlighted the representations and warranties that Mr. Patarkatsishvili was being asked to give, and explained to him that he could have a potential liability if Mr. Berezovsky brought a claim asserting that the sale of the second RusAl tranche infringed his rights. Mr. Patarkatsishvili confirmed to Mr. Streshinsky that he understood that he was acting alone. The suggestion was put to Mr. Streshinsky in cross-examination that Mr. Patarkatsishvili told Mr. Streshinsky that the representation was false, but that he would agree to it if that was what it would take to get the RusAl sale transaction done. It was asserted that Mr. Faekov was not a party to the conversation and Mr. Streshinsky was challenged that he had not recorded it. Mr. Streshinsky firmly rejected the suggestion that Mr. Patarkatsishvili told him that the representation was incorrect. I accept Mr. Streshinsky's evidence on this aspect.

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554 See Day 39, pages 5-6.

The fact that he did not document his conversations with Mr. Patarkatsishvili was unsurprising; he was not a lawyer and it was not his usual practice to draw up attendance notes. Moreover, he followed up his conversation with Mr. Patarkatsishvili with a "deal approval document" which was drafted by Mr. Faekov and set out the final structure of the transaction including a list of all the potential risks involved. These risks included the possibility that Mr. Berezovsky might make a claim, but Mr. Faekov noted that "we are unaware of facts upon which [Mr. Berezovsky] could rely". Mr. Patarkatsishvili signed the document.

1215. Mr. Berezovsky also relied upon various communications between the parties' representatives leading to the 2004 sale, as well as communications passing between Mr. Patarkatsishvili's advisers and the lawyers acting for the First Zurich Bank concerning an attempt to open a bank account for Mr. Patarkatsishvili. Mr. Hauser, Ms. Panchenko, Mr. De Cort, and Mr. Streshinsky were cross-examined at length on this documentation in an attempt to establish one or more of the following propositions:

i) that the documents demonstrated that there were two beneficial owners of the RusAl 25% tranche and that those owners were Mr. Berezovsky and Mr. Patarkatsishvili;

ii) that Mr. Abramovich, Mr. Deripaska and Mr. Anisimov, either directly or through their representatives, were aware of that fact; and

iii) that Mr. Berezovsky was deliberately airbrushed out of the transaction.

These allegations were disputed by those involved. In my judgment, the evidence, on a full analysis of the documentation, did not establish any of these propositions. The initial references to two beneficiaries in some of the documents, and in particular to Mr. Berezovsky, largely came about as a result of Mr. Berezovsky's claims in the media and the fact that the transactional lawyers involved initially prepared draft proposals, without having had complete knowledge of the underlying transaction from their principals.

1216. Accordingly I reject Mr. Berezovsky's argument that the evidence relating to the negotiation and sale of the second 25% tranche of RusAl shares supports his case.

The interviews with Mr. Patarkatsishvili

1217. Mr. Berezovsky sought to claim support for his case that he had an interest in RusAl from the Patarkatsishvili proofing materials. The notes of interviews with Mr. Patarkatsishvili recorded that he told Mr. Berezovsky's solicitors in 2005 and 2007 that he and Mr. Berezovsky each had a 50/50 interest in RusAl (as well as in Sibneft, a topic which I have already addressed). By the date of their first visit to Mr. Patarkatsishvili, Mr. Berezovsky's solicitors had been told by Mr. Berezovsky that he alleged that he and Mr. Patarkatsishvili had once held a joint interest in Sibneft and RusAl; and they had already been instructed by Mr. Berezovsky to investigate potential claims against Mr. Abramovich in relation to, amongst other matters, RusAl and Sibneft. I have described, in an earlier section of this judgment, the circumstances in which the proofing materials were compiled, and that by the time of the interviews, both Mr. Patarkatsishvili and Mr. Berezovsky had made numerous

representations to Western professionals which had allowed funds to be received by them in the West and which would have been wholly undermined, if Mr. Patarkatsishvili had departed from them. These representations had been supported by documents produced for the purpose; for example the fleeting interest of Mr. Patarkatsishvili in RusAl had been "documented" in the form of the agreements with Madison, Cliren and Eagle; and the alleged interest of Mr. Berezovsky and Mr. Patarkatsishvili in Sibneft had been "documented " in the form of the Devonia Agreement. In those circumstances it would have been embarrassing and difficult for Mr. Patarkatsishvili to have given a different story to Mr. Berezovsky's solicitors as to the source of the funds; it would, or could, have harmed both their interests. It would not have been at all surprising if he had not chosen to explain the true reason for the receipt of such substantial funds from Mr. Abramovich.

1218. Accordingly, whilst the Patarkatsishvili proofing materials on their face provide support for Mr. Berezovsky's case in relation to this issue, for reasons similar to those set out in relation to Sibneft, I do not regard them as having sufficient evidential weight to persuade me that I should reject the evidence of Mr. Abramovich, Mr. Deripaska and Mr. Anisimov in relation to RusAl.

Conclusion in relation to Issue B2, Issue 17 in the Agreed List of Issues and Overlap Issue 2

1219. Accordingly, I conclude that there was no agreement made at the Dorchester Hotel meeting (or indeed at any other time) involving Mr. Berezovsky, that he, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska would pool their assets in the Russian aluminium industry.

Conclusion in relation to Overlap Issue 5

1220. Overlap Issue 5 was defined as follows:

> "Was the $585 million received by Cliren following the sale of the Second Tranche of RusAl shares (as defined at paragraph 29 of the Abramovich List of Issues):
>
> (a) …
>
> (i) $450 million of sale proceeds and
>
> (ii) $135 million of outstanding dividend payments from RusAl?; and/or
>
> (b) A payment made by Mr. Abramovich to Mr. Patarkatsishvili at the request of Mr. Patarkatsishvili in return for him providing assistance and protection to Mr. Abramovich in relation to Mr. Abramovich's acquisition of assets in the Russian aluminium industry?

1221. I have already addressed the facts relating to this issue in the context of my determination of Issue B2 above. My conclusion in relation to Overlap Issue 5 therefore follows my findings in relation to the former issue.

Executive summary and conclusion in relation to Overlap Issue 5

1222. The commercial rationale for the $585 million received by Cliren following the sale of the second 25% tranche of RusAl shares was to discharge Mr. Abramovich's obligation to pay an agreed commission to Mr. Patarkatsishvili for assistance provided by Mr. Patarkatsishvili to Mr. Abramovich in relation to the acquisition of the pre-merger aluminium assets and more generally in connection with the aluminium business. As a mechanism to effect this payment, Mr. Patarkatsishvili's company, Cliren, became for a very short period of time a shareholder in RusAl Holding and immediately sold those shares on to Eagle, a company owned by Mr. Deripaska. In that limited sense only, $450 million of the $585 million received by Cliren following the sale of the second 25% tranche of RusAl shares represented proceeds of sale. The balance of $135 million was paid as a purported dividend under the Deed of Accounting and Release but, although that was the method of payment, in fact none of the money paid to Cliren represented dividends to which Mr. Patarkatsishvili was entitled by virtue of any shareholding acquired prior to July 2004.

Section XVI - Issue B3: Was it expressly agreed at the Dorchester Hotel meeting on 13 March 2000 that Mr. Abramovich would hold Mr. Berezovsky's and Mr. Patarkatsishvili's interest in the aluminium business created by the merger of those assets with Mr. Deripaska's aluminium interests on trust for Mr. Berezovsky and Mr. Patarkatsishvili under an English law trust?

Introduction

1223. Issue B3 of the liability issues, as I have defined them, is:

> "Was it expressly agreed at the Dorchester Hotel on 30 March, 2000 that Mr. Abramovich would hold their interest in the aluminium business created by the merger of those assets with Mr. Deripaska's aluminium interests on trust for Mr. Berezovsky and Mr. Patarkatsishvili under an English law trust?"

1224. This issue corresponds to the trust element of Issue 19(1) in the Agreed List of Issues, namely:

> "If the above agreements were made: (1) Was it expressly agreed that the trust and/or fiduciary duties ... would be governed by English law?"

It also corresponds to Overlap Issue 3.

1225. This issue only arose if I had concluded that Mr. Berezovsky was intended to have an interest in the merged aluminium business. I have found that he was not so entitled. Accordingly, the question of whether Mr. Abramovich agreed to hold that interest on trust, under whatever law, does not strictly arise. However I can say that, in any

event, I did not accept Mr. Berezovsky's evidence that there was an express agreement that Mr. Abramovich should hold any such interest under an English law trust. I accept Mr. Abramovich's evidence that he made no agreement with Mr. Berezovsky and Mr. Patarkatsishvili that he would hold their alleged interest in the merged RusAl business on trust for the two men.

Executive summary and conclusion in relation to Issue B3

1226. The issue as to whether there was any express agreement that Mr. Berezovsky and Mr. Patarkatsishvili's interest in the aluminium assets should be held on an English law trust for Mr. Abramovich did not arise, in the light of my previous determination that Mr. Berezovsky had no such interest. In any event, the evidence did not support any agreement that Mr. Abramovich would hold any such interest on trust for Mr. Berezovsky and Mr. Patarkatsishvili whether under English law or otherwise.

Section XVII - Issue B4: If it was agreed that Mr. Berezovsky would have an interest in the merged business, but there was no express agreement about the law governing the arrangements between him, Mr. Abramovich and Mr. Patarkatsishvili relating to that business, then what law did govern those arrangements?

Introduction

1227. Issue B4 of the liability issues, as I have defined them, is:

> "**Issue B4**: If it was agreed that Mr. Berezovsky would have an interest in the merged business, but there was no express agreement about the law governing the arrangements between him, Mr. Abramovich and Mr. Patarkatsishvili relating to that business, then what law did govern those arrangements?"

1228. This issue corresponds to Issue 19(2) in the Agreed List of Issues, namely:

> "If [there was no express agreement that the trust and/or fiduciary duties and/or the contract would be governed by English law]: … was there an implied choice of English law, or was English law the system of law with which the trust and/or the fiduciary duties and/or the contract were most closely connected?"

It also corresponds to Overlap Issue 3.

Executive summary and conclusion in relation to Issue B.4

1229. The issue as to whether there was an implied choice of English law, or whether English law was the system of law with which the alleged trust and/or fiduciary duties and/or the contract were most closely connected, simply did not arise for consideration, in the light of my previous determination that Mr. Berezovsky had no such interest, and that there was no agreement to hold such interest on trust. It would be inappropriate to decide such an issue on a wholly hypothetical basis.

Section XVIII - Issue B5: Would the alleged express RusAl trust be good even in English law?

Introduction

1230. Issue B5 of the liability issues, as I have defined them, is:

> "Would the alleged express RusAl trust be good even in English law?"

1231. This issue corresponds to Issue 20 of the Agreed List of Issues:

> "If the above agreements in respect of RusAl were made, did they create a valid express trust under English law by which Mr. Abramovich, as trustee, held either: (1) 50% of his rights of ownership and/or control in relation to the RusAl shares; or (2) his rights of ownership and/or control in relation to 25% of the RusAl shares; or (3) 50% of the RusAl shares ultimately owned and/or controlled by him on express trust for Mr. Berezovsky and Mr. Patarkatsishvili?"

It also corresponds to Overlap Issue 3.

Executive summary and conclusion in relation to Issue B5

1232. The issue as to whether the alleged express RusAl trust would be good even in English law did not arise for consideration, in the light of my previous determination that Mr. Berezovsky had no such interest. It would be inappropriate to decide such an issue on a wholly hypothetical basis.

Section XIX - Issue B6: If there was no valid express trust, was there a resulting or constructive trust governed by English law?

Introduction

1233. Issue B6 of the liability issues, as I have defined them, is:

> "… If there was no valid express trust, was there a resulting or constructive trust governed by English law?"

1234. This section addresses Issue 21 of the Agreed List of Issues:

> "If not, did the alleged express agreements and/or understandings, if necessary in the light of the pooling of the Russian aluminium industry assets allegedly part-owned by Mr. Berezovsky, give rise to a resulting or constructive trust governed by English law in favour of Mr. Berezovsky?"

It also corresponds to Overlap Issue 4:

> "(4) In the alternative to 3(c), did the Claimant acquire any interest in RusAl under an English law resulting or

> constructive trust (other than as a result of the joint venture agreement alleged by the Claimant in the Main Chancery Action)?"

Executive summary and conclusion in relation to Issue B6

1235. In the light of my finding in relation to Issue B1, namely that Mr. Berezovsky did not have any proprietary, legally enforceable interest in the pre-merger aluminium assets as a result of any agreement with Mr. Abramovich, and did not acquire such interest as a result of the discussions at the Dorchester Hotel meeting, it follows that Mr. Berezovsky did not acquire any interest under a resulting or constructive trust governed by English law in relation to shares in RusAl. I make no determination in relation to any claim by Mr. Berezovsky that he acquired such an interest as a result of the alleged joint venture agreement asserted by him in the main Chancery action, which is not for determination in these proceedings.

Section XX - Issue B7: Was it agreed at the Dorchester Hotel between Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska that none of them should be entitled to sell his interest in the merged business without the consent of the others?

Introduction

1236. Issue B7 of the liability issues, as I have defined them, is:

> "Was it agreed at the Dorchester Hotel between Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska that none of them should be entitled to sell his interest in the merged business without the consent of the others?"

1237. This issue corresponds to Issue 18(2) of the Agreed List of Issues:

> "Was it expressly agreed and/or understood at the Dorchester meeting:
>
> …
>
> (2) That none of Mr. Deripaska, Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would sell his interest in RusAl without the agreement of the others?"

Executive summary and conclusion in relation to Issue B7

1238. No agreement to the effect that none of Mr. Deripaska, Mr. Abramovich Mr. Berezovsky or Mr. Patarkatsishvili would be entitled to sell his interest in the merged business without the consent of the others was concluded at the Dorchester Hotel meeting. I have already addressed the principal evidence relating to this issue under Issue B2 above.

1239. The merger terms were not in fact negotiated at the Dorchester Hotel meeting. It is inconceivable that, if such a term had been agreed as part of the merger terms with Mr. Deripaska, it would not have been embodied in a written agreement like the rest

of the merger terms. In particular, one would have expected to see such a term included in the 15 March SPSA or at the very least in some written collateral agreement. Nor did the term appear in the 15 May 2000 Restated SPSA. Moreover, the suggested term, in its simplistic formulation, made no commercial sense.

Section XXI - Issue B8: If such an agreement was made, what was its proper law? Issue B9: Was the sale of the first 25% tranche of RusAl in September 2003 a breach of (i) trust or (ii) contract?

Introduction

1240. I take these issues together. Issues B8 and B9 of the liability issues, as I have defined them, are:

> "**Issue B8**: If such an agreement was made, what was its proper law?
>
> **Issue B9**: Was the sale of the first 25% tranche of RusAl in September 2003 a breach of (i) trust or (ii) contract?"

1241. Issue B8 corresponds to the contract part of (i) Issue 19(1) of the Agreed List of Issues:

> "If the above agreements were made:
>
> (1) Was it expressly agreed that ... the contract would be governed by English law?"

and (ii) Issue 19(2) of the Agreed List of Issues:

> "(2) If not, was there an implied choice of English law, or was English law the system of law with which ... the contract were most closely connected?"

Issue B8 also addresses Overlap Issue 3(b).

1242. Issue B9 corresponds to Issue 23(1) in the List of Issues:

> "When Mr. Abramovich sold 25% of RusAl ("the First Tranche") to Mr. Deripaska in September 2003: (1) Did the sale amount to a breach of trust and/or fiduciary duty and/or contract by Mr. Abramovich?"

Executive summary and conclusion in relation to Issues B8 and 9

1243. In the light of my conclusion that there was no such agreement restricting the sale of Mr. Abramovich's or Mr. Deripaska's RusAl shares without the consent of each of those two men and Mr. Berezovsky and Mr. Patarkatsishvili, Issue B8, namely what was the proper law of such agreement, does not arise for consideration.

1244. It likewise follows that, when Mr. Abramovich sold the first 25% tranche of RusAl shares to Mr. Deripaska in September 2003 the sale did not amount to any breach of trust and/or fiduciary duty and/or contract on the part of Mr. Abramovich.

Section XXII - Issue B10: Was any liability released under the terms of the agreement for the sale of the second 25% tranche of RusAl shares on 20 July, 2004?

Introduction

1245. This Issue corresponds with Issues 24 and 25 in the Agreed List of Issues, which are as follows:

> "24. Has there been a settlement and release of the claims in relation to RusAl by reason of the Deed of Settlement dated 20 July 2004 between Cliren and Madison. In particular:
>
> (1) Is the effect of the Deed of Settlement such that as a deed it is only binding on Madison and Cliren and not binding on Mr. Berezovsky, or is it a contractual release?
>
> (2) Did Cliren have authority on behalf of Mr. Berezovsky to release any potential claims which Mr. Berezovsky might have against Mr. Abramovich in relation to RusAl?
>
> 25. On the proper construction of the release contained in the Deed of Settlement, does the Deed of Settlement release Mr. Abramovich from any potential claims which Mr. Berezovsky might have against him?"

Executive summary and conclusions in relation to Issue B10

1246. In the light of my conclusions in relations to Issues B1 and B2, Issue B10 is, for all practical purposes, academic, since I have decided that Mr. Berezovsky did not have any entitlement to make any claims, or potential claims, against Mr. Abramovich, or Madison, in relation to RusAl. In other words, the question whether such claims as Mr. Berezovsky has brought against Mr. Abramovich (which I have held to be unfounded), were in fact released by the Deed of Settlement as between Madison and Cliren is moot. It was not suggested, for example, that the court's determination on this issue is required to prevent any further or future claim by Mr. Berezovsky against Mr. Abramovich in relation to RusAl. Unless I am persuaded that there is a specific and necessary reason for my decision on this issue, I am reluctant to decide it. There would appear to be no utility in my doing so. If I am mistaken in this regard, and there is a need for me to do so, I will.

1247. It is clear from the decision in *BCCI v Ali* [2002] 1 AC 251 at paragraph 8, that there are no special rules of interpretation applicable to a release: it is to be construed in the same way as every other contract, the question being the intention of the parties ascertained objectively in the context of the circumstances in which the release was

entered into. Whether a particular claim or potential claim is caught by the express terms of the particular release can be heavily dependent on the factual matrix, as the decision in *Ali* itself demonstrates. A slight change in the facts as I have found them to be (for example, if it had been the case that Mr. Abramovich believed that Mr. Berezovsky had a genuine claim to an interest in RusAl and knew that he was not prepared to sign the release) might have produced a different conclusion in relation to the issue raised. I would not therefore be prepared to decide the issue on a hypothetical basis, for example that Mr. Berezovsky's claim to an interest in RusAl was well-founded, without an agreed factual basis for the hypothesis upon which I was to decide the issue.

Disposition

1248. It follows that I dismiss Mr. Berezovsky's claims both in relation to Sibneft and in relation to RusAl in their entirety. I direct that any consequential matters arising out of this judgement should be addressed on a subsequent occasion, when counsel have had an opportunity to consider this judgement and supply me with a draft form of order reflecting my findings.

Afterword

1249. It is appropriate that I should pay tribute to the highly professional and efficient way in which this case was conducted, in the best Commercial Court traditions, not only by the respective teams of counsel and solicitors, but also by the respective participants and their service providers. Of course, the judge sees only the public panoply of the courtroom, but, whatever tensions or undercurrents there may have been between the parties, or indeed the lawyers, in what were, heavily fought, acrimonious disputes involving serious allegations of dishonesty and blackmail, the case was battled out in a courteous, disciplined and restrained manner. That necessarily contributed to an efficient and effective trial process.

1250. There were also a number of other features which significantly contributed to the smooth running of the trial. Perhaps most importantly, the extensive documentation and daily transcripts were presented in a highly organised and easily accessible web-based electronic format, with the result that, apart from reliance on hardcopy versions of the written arguments, and, to a limited extent, the expert statements, I was able to conduct what, at least so far as I was concerned, was a paperless trial. There can be no doubt that this enabled the trial to be concluded within the allotted timetable, and with the maximum efficiency. It also provided the inestimable advantage, from my perspective, of being able to access my notes made during trial, and the full galaxy of the trial bundles, from wherever I was and at whatever time of day (or night). I am extremely grateful, as, I am sure, are the other lawyers in the case, for all the technical assistance which I and they received in this respect.

1251. Another significant contributor to the trial process was the skill, efficiency and understanding cooperation of the simultaneous translators. Their industry enabled evidence given in Russian to be delivered, and understood, in English in a virtually seamless fashion. Absent their contribution, I have no doubt that the trial would have taken considerably longer.

1252. I must also express my gratitude to those who were responsible for the quality and detail of the extensive written submissions, without which my task would have been immeasurably harder. They have been an invaluable aid to the completion of this judgement. The fact that all the evidential and legal points, minutely and comprehensively analysed in lengthy footnotes, have not necessarily featured in this judgement, does not mean that they have not been pored over, and taken into account, in reaching my conclusions. The specific references in footnotes to trial materials were of particular assistance; I especially thank those who were tasked with the unenviable job of checking their accuracy.

1253. Finally, I make no apologies for the length of this judgement. As Pascal said[555], "it is only so long because I have not had the leisure to make it shorter".

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555 Blaise Pascal, *Lettres Provinciales*, 16th Letter, 4 December, 1656: "Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte."

Appendix 1: List of Issues (as agreed by the parties)

"**A The Sibneft claim**

1. What was the nature of the arrangement or agreement between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in 1995 in relation to the creation and acquisition of Sibneft? In particular, was the arrangement or agreement:

   (1) Of the nature and in the terms alleged by Mr. Berezovsky in paragraphs C33-C34 of the Re-Re-Amended Particulars of Claim and paragraphs 97-105 of Mr. Berezovsky's fourth witness statement ; or

   (2) Of the nature alleged by Mr. Abramovich in paragraphs D.32 of the Re-Amended Defence and paragraphs 55-58 of Mr. Abramovich's third witness statement;

2. If the three parties reached an agreement of the kind alleged by Mr. Berezovsky ("the 1995 Agreement"):

   (1) Was the 1995 Agreement, as alleged in paragraphs C34A and C34B of the Re-Re-Amended Particulars of Claim, a valid "joint activity" or "simple partnership" agreement, or a *sui generis* agreement, under Russian law, which conferred on Mr. Berezovsky and Mr. Patarkatsishvili:

      (a) the right to demand from Mr. Abramovich a distribution of the acquired ownership interest in Sibneft in the agreed proportion;

      (b) rights of co-owners in respect of any property directly acquired by Mr. Abramovich as a result of the agreement; and/or

      (c) the right to demand distribution of profits resulting from the joint activity in the agreed proportion?

   (2) Alternatively, was the 1995 Agreement invalid or ineffective under Russian law as alleged in paragraph D34 of the Re-Amended Defence? In particular:

      (a) Did the agreement fail to contain all the essential terms for a simple partnership agreement, including in particular the parties' (i) shares in the partnership, (ii) contributions to the partnership and (iii) goal of the partnership?

      (b) Was the agreement invalid or ineffective by reason of its having been made orally?

      (c) Was the agreement intended to have legal consequences, or to be binding "in honour only"?

      (d) Was any defect in the agreement cured by subsequent performance by the parties?

(e) If and to the extent that any part of the 1995 Agreement was invalid or ineffective, did the balance of the agreement nevertheless constitute a valid and effective agreement?

(f) If the agreement was invalid or ineffective as a partnership agreement, was it nevertheless valid and effective as a *sui generis* agreement under Russian law?

(g) Did the agreement violate Article 434(2) of the 1964 Civil Code?

(h) Were any shares in Sibneft or other interest in Sibneft common property of the partners under the agreement?

(i) Would any claims that Mr. Berezovsky had arising out of the 1995 Agreement have become time-barred by May or June 2001, leaving him with no rights after that date?

3. Was there an agreement reached in 1996 ("the 1996 Agreement") between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich, in the terms alleged in paragraph C37 of the Re-Re-Amended Particulars of Claim, whereby:

(1) they would arrange matters so that Mr. Abramovich was the legal owner of all the Sibneft shares acquired pursuant to the 1995 Agreement;

(2) Mr. Berezovsky and Mr. Patarkatsishvili would continue to have the rights and interests which they had acquired pursuant to the 1995 Agreement;

(3) Mr. Abramovich would, upon request, transfer to Mr. Berezovsky and Mr. Patarkatsishvili upon request shares equivalent to their interests in Sibneft in the agreed percentages;

(4) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to dividends and to any other payments made by Sibneft to its owners on the basis of the agreed percentage split; and

(5) thereafter any further acquisitions of Sibneft shares would be held on the same basis?

4. If the 1996 Agreement was made, was it:

(1) A valid agreement, under which Mr. Berezovsky and Mr. Patarkatsishvili acquired or retained valuable rights under Russian law; or

(2) Invalid or ineffective under Russian law as alleged in paragraph D37.2 of the Re-Amended Defence? In particular:

(a) Was the 1996 Agreement invalid or ineffective on the basis that it was an amendment or addition to the 1995 Agreement?

(b) Were the nature and content of the 1996 Agreement such that (i) the parties cannot have intended it to be binding and/or (ii) it lacked sufficient certainty to be regarded under Russian law as a legally

binding agreement (as opposed to, at most, one binding in honour only)?

(c) Was the 1996 Agreement invalid or ineffective by reason of its having been made orally?

(d) Was the 1996 Agreement void because it was an attempt to create a trust or other form of split ownership of shares?

(e) Was the 1996 Agreement void as a contract of future gift which was not made in writing?

(f) Would any claims that Mr. Berezovsky had arising out of the 1996 Agreement have become time-barred prior to May or June 2001, leaving him with no rights after that date?

5. What is the governing law of the claim in intimidation? In particular:

(1) Where did the most significant element or elements of the events constituting the alleged tort take place, for the purposes of section 11(2)(c) of the Private International Law (Miscellaneous Provisions) Act 1995? Did they take place in (a) England; (b) France; or (c) Russia?

(2) If the events constituting the alleged tort took place in France or England, is it nevertheless substantially more appropriate (within the meaning of section 12 of the 1995 Act) for the applicable law to be Russian law?

6. Did Mr. Berezovsky and Mr. Patarkatsishvili agree to sell their interests in ORT to Mr. Abramovich following threats communicated by Mr. Abramovich and delivered by him on behalf of the Russian State authorities? In particular:

(1) Were any of Mr. Abramovich's statements in the course of the meeting between himself, Mr. Berezovsky and Mr. Patarkatsishvili at Le Bourget airport in France on 6 December 2000 of an intimidatory nature?

(2) Was there a meeting between Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich in Cap d'Antibes in December 2000 at which Mr. Abramovich communicated any such threats?

7. Did Mr. Abramovich make threats to Mr. Berezovsky and Mr. Patarkatsishvili (relayed by Mr. Patarkatsishvili to Mr. Berezovsky), with the intention of causing them to dispose of their interests in Sibneft? In particular:

(1) Did Mr. Abramovich threaten in the course of meetings in Moscow with Mr. Patarkatsishvili from about August 2000 to May 2001 that he would use his influence with the Putin regime to seek to cause Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft to be expropriated unless they sold their interests to him?

(2) Did Mr. Abramovich threaten in the course of a meeting at Munich or Cologne airport in May 2001 that Mr. Abramovich would use his influence

within the Putin regime to seek to ensure that Mr. Glushkov would not be released from prison?

8. If the threats alleged in paragraph 7 were made, did they in fact coerce Mr. Berezovsky into disposing of his alleged rights in relation to Sibneft or did he do so for other reasons?

9. Did Mr. Berezovsky and Mr. Patarkatsishvili effectively dispose of any of their alleged rights in June 2001 by way of the Devonia Agreement? In particular:

   (1) Was the Devonia Agreement capable in law of disposing of any of the rights under Russian law that Mr. Berezovsky alleges he had in respect of Sibneft?

   (2) Was the Devonia Agreement a genuine agreement or a sham?

10. Did Mr. Berezovsky suffer loss as a result of disposing of his interest in Sibneft at an undervalue or was the proportion of the $1.3 billion he received as great as, or in excess of, the value of the rights he alleges he had in respect of Sibneft?

11. If the applicable law is Russian law:

   (1) Did Mr. Abramovich's conduct fulfil the conditions for liability under Article 1064 of the Russian Civil Code?

   (2) Did Mr. Berezovsky refrain from bringing proceedings against Mr. Abramovich within the limitation period (which expired in 2004) because he remained in fear as to the steps which Mr. Abramovich might take (a) to prevent Mr. Glushkov's release from prison, and/or (b) to influence the ongoing prosecution of Mr. Glushkov?

   (3) If so:

      (a) Would it be an abuse of right within the meaning of Article 10 of the Russian Civil Code for Mr. Abramovich to rely on the expiry of the limitation period?

      (b) Is there a compelling reason for reinstating the limitation period pursuant to Article 205 of the Russian Civil Code?

      (c) Would the Claimant, in the light of all the circumstances as found by the Court, be unable to rely on Article 205 of the Russian Civil Code by reason of the fact that Mr. Glushkov left Russia in July 2006 and proceedings were issued in June 2007?

      (d) Should the Russian limitation be disapplied and the English limitation be applied on the basis that the application of Russian law would cause Mr. Berezovsky to suffer 'undue hardship' within the terms of section 2(2) of the Foreign Limitation Periods Act 1984?

12. Did Mr. Abramovich subsequently pay an additional US$377.5 million to Mr. Berezovsky, and, if so, was this compensation for lost interest and commission in relation to the US$1.3 billion payment?

13. If Mr. Abramovich is liable to Mr. Berezovsky, on what basis should damages be calculated? In particular:

    (1) Should damages be evaluated by reference to the value of Sibneft (a) as at June 2001 or (b) as at September 2005?

    (2) Should damages be evaluated on the basis of fair market value or market value?

    (3) What was the value of Mr. Berezovsky's alleged interest in Sibneft in (a) June 2001 or (b) September 2005?

    (4) Could Mr. Berezovsky have participated in the Gazprom transaction in 2005 (or have been able to sell at a full market price to any other prospective purchaser)?

    (5) Would Mr. Berezovsky have participated in the Yukos transaction in 2003 (resulting in sale of 20% of his interest and a commensurately reduced stake in Sibneft thereafter)?

    (6) Should credit be given for the additional payment of US$377.5 million paid to Mr. Berezovsky referred to in Re-re-Amended Defence paragraph D45.3?

14. For what loss (if any) Mr. Berezovsky should be compensated (subject to paragraph 15 below)?

15. If and to the extent that Mr. Berezovsky succeeds on liability, a further hearing will also need to determine the following:

    (1) Whether, in calculating any damages, credit must be given for any taxes that Mr. Berezovsky would have incurred on any Sibneft sale proceeds or dividends, pursuant to the various provisions of the Tax Code of the Russian Federation?

    (2) Whether Mr. Berezovsky would have been able to obtain any necessary permit enabling him to remit any sales proceeds or dividends abroad, or whether, in calculating any damages, credit must be given for the risk that any sales proceeds or dividends would have been frozen or confiscated as a result of the criminal investigation into Aeroflot and Mr. Berezovsky's subsequent conviction pursuant to the various provisions of the Criminal Code and Criminal Procedural Code of the Russian Federation?

B The RusAl claim

16. Did Mr. Berezovsky acquire any interest in any Russian aluminium industry assets prior to the meeting at the Dorchester Hotel in March 2000 (other than as a result of any bilateral joint venture between Mr. Berezovsky and Mr. Patarkatsishvili)?

17. At the Dorchester Hotel meeting, did Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska agree to pool their assets in the Russian aluminium industry?

18. Was it expressly agreed and/or understood at the Dorchester meeting:

    (1) That Mr. Abramovich would, as trustee, hold half of his 50% interest on trust for Mr. Berezovsky and Mr. Patarkatsishvili, as beneficiaries; and/or

    (2) That none of Mr. Deripaska, Mr. Abramovich, Mr. Berezovsky and Mr. Patarkatsishvili would sell his interest in Rusal without the agreement of the others; and/or

    (3) That Mr. Abramovich would assume fiduciary obligations in relation to Mr. Berezovsky and Mr. Patarkatsishvili?

19. If the above agreements were made:

    (1) Was it expressly agreed that the trust and/or fiduciary duties and/or the contract would be governed by English law?

    (2) If not, was there an implied choice of English law, or was English law the system of law with which the trust and/or the fiduciary duties and/or the contract were most closely connected?

20. If the above agreements in respect of Rusal were made, did they create a valid express trust under English law by which Mr. Abramovich, as trustee, held either:

    (1) 50% of his rights of ownership and/or control in relation to the Rusal shares; or

    (2) his rights of ownership and/or control in relation to 25% of the Rusal shares; or

    (3) 50% of the Rusal shares ultimately owned and/or controlled by him on express trust for Mr. Berezovsky and Mr. Patarkatsishvili?

21. If not, did the alleged express agreements and/or understandings, if necessary in light of the pooling of the Russian aluminium industry assets allegedly part-owned by Mr. Berezovsky, give rise to a resulting or constructive trust governed by English law in favour of Mr. Berezovsky?

22. Were payments of US$50 million to Blue Water Resources Inc in 2003, and US$125 million to Rich Brown Enterprises Limited from 2003 to 2005, payments of Rusal profits; or were they part of a payment of interest and "commission" in relation to the US$1.3 billion (issue 12 above)?

23. When Mr. Abramovich sold 25% of Rusal ("the First Tranche") to Mr. Deripaska in September 2003:

    (1) Did the sale amount to a breach of trust and/or fiduciary duty and/or contract by Mr. Abramovich?

(2) Is Mr. Berezovsky entitled to treat the sale as the sale of his and Mr. Patarkatsishvili's interest, or part of that interest, in Rusal?

24. Has there been a settlement and release of the claims in relation to Rusal by reason of the Deed of Settlement dated 20 July 2004 between Cliren and Madison. In particular:

(1) Is the effect of the Deed of Settlement such that as a deed it is only binding on Madison and Cliren and not binding on Mr. Berezovsky, or is it a contractual release?

(2) Did Cliren have authority on behalf of Mr. Berezovsky to release any potential claims which Mr. Berezovsky might have against Mr. Abramovich in relation to Rusal?

25. On the proper construction of the release contained in the Deed of Settlement, does the Deed of Settlement release Mr. Abramovich from any potential claims which Mr. Berezovsky might have against him?

26. If Mr. Abramovich acted in breach of trust and/or fiduciary duty and/or contract:

(1) Does he, as a result, hold any proceeds of the sale of the First Tranche, or their traceable proceeds, that are still in his hands on trust for Mr. Berezovsky and Mr. Patarkatsishvili?

(2) Is Mr. Abramovich liable, as a result, to account in equity for the profit he made from the sale of the First Tranche and/or does he hold such profits as constructive trustee for Mr. Berezovsky and Mr. Patarkatsishvili? If so, in what amount is Mr. Abramovich liable to account / what sum does he hold as constructive trustee?

(3) Is Mr. Abramovich liable as a result to compensate Mr. Berezovsky for his loss? If so:

(a) Is this loss to be calculated as the difference between the value of Mr. Berezovsky's interest in Rusal before the sale by Mr. Abramovich to Mr. Deripaska, or in some other manner?

(b) Is the calculation the difference between the sale price of the First Tranche and the sale price of the Second Tranche, or is it to be calculated in some other manner?

27. If and to the extent that Mr. Berezovsky succeeds on liability and on issue 26(1) above, a further hearing will also need to determine whether (and, if so, to what extent) Mr. Abramovich still holds any proceeds of the sale of the First Tranche (or their traceable proceeds)."