Tuesday, 4 October 2011

(10.15 am)

(Proceedings delayed)

(10.28 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Opening submissions by MR SUMPTION

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

Your Ladyship knows the outline: it is apparent from the historical experts, from a number of witnesses and indeed from Mr Berezovsky's own evidence. 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 now experienced in less than a decade a transition to capitalism which had taken other European countries are more than a century to

achieve.

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

MR SUMPTION: 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.

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

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

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

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

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

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

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

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

"... 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)."

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

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

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

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

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

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

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

litigation against his former factotum, Mr Fomichev.

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

Mr Berezovsky's case must be --

MRS JUSTICE GLOSTER: The Commercial Court action against Fomichev?

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

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

Now, if Mr Berezovsky's contribution was not money

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

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

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

shareholder in it.

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

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

The problem about ORT was that it was bust.

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

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

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

selling off the other 49 per cent. The avowed purpose of this exercise was to enable Boris Berezovsky and his associate, Mr Abramovich, to take control over Sibneft and use it to provide a source of funds to finance the operations of ORT and enable it to support President Yeltsin in the elections that were due to occur in June 1996.

Mr Berezovsky in his witness statement says that the main reason why he was able to prevail on President Yeltsin to do this was that he was trading access to State assets on favoured terms in return for electoral support by his powerful media empire. The parallel deal between Mr Berezovsky and Mr Abramovich was equally simple: in return for getting what was needed out of President Yeltsin, Mr Berezovsky was going to be provided by Mr Abramovich with the cash stream which he could use to contribute to the funding of ORT.

My learned friend said that if such a deal was made, it was a corrupt deal. It was made, according to Mr Berezovsky's own evidence. I accept of course that my client was privy to it. But the reality was that that was how business was done in Russia at the time. Mr Berezovsky says repeatedly in his witness statement 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. We accept that that was so.

Although Mr Abramovich acquired Sibneft with his own funds, as I shall explain, and built it up by his own management, he has always acknowledged that he would not have had the opportunity to do that without Boris Berezovsky's political patronage. He has always recognised also from the outset that he would have to pay Mr Berezovsky for that advantage and also that in a more general sense, in the world of reciprocal favours on which all of this was based, he owed Mr Berezovsky a great deal.

Now, these payments are referred to in Russian as "Krysha", "roof". An alternative English expression which was recorded by Mr Berezovsky's solicitors when they interviewed Mr Patarkatsishvili in 2005 was "refuge", "protection".

Now, it will be readily apparent to your Ladyship why a deal of this nature was not reduced to writing or even privately recorded in writing by either side. An agreement to sell media support to the president of Russia in return for privileged access to state-owned assets, accompanied by another deal to sell to Roman Abramovich for money or monies' worth that advantage, is

simply not the kind of agreement which the parties can ever envisage would be legally binding.

Can it ever have been seriously thought that these kind of matters would, in the last resort, be adjudicated upon by the Russian courts, those being the only courts that any of them can have anticipated in 1995 would be available to them for the purpose? Of course not.

Mr Berezovsky in his reply complains about the use of the term "Krysha" because he says that it is redolent of protection rackets operated by criminal gangs. That is not the sense in which I am using it.

The evidence of my client is that there was an element of physical as well as political protection involved in Mr Abramovich's relationship with Mr Berezovsky. It was important, as Mr Berezovsky of all people knew, having been the victim of a campaign of vandalism and attempted murder at the hands of his business rivals. But physical protection was not provided by Mr Berezovsky but by his associate Mr Patarkatsishvili. I am not going to invite your Ladyship to make any finding about it; I have no desire to be more abrasive than I need to be and in fact nothing in this dispute turns on the physical aspect of the protection accorded.

The one exception to that, and it's a very minor one, concerns Rusal. A significant part of the business rationale for Mr Abramovich acquiring the aluminium assets in 1999 and 2000 was that their profitability had been depressed by criminal extortion over the previous years and could be restored if the criminal activities affecting the aluminium industry could be brought to an end. Mr Patarkatsishvili played an important part in bringing them to an end by methods which are not in evidence, thank goodness.

I am not going to, in the course of this opening, offer your Ladyship a complete narrative of events. We have sought to do that in our written opening.

MRS JUSTICE GLOSTER: Yes, I've read the entirety of your written opening. As I said to Mr Rabinowitz, I'm very grateful to all members of the legal team for the very comprehensive written arguments on all sides.

MR SUMPTION: My Lady, in addition to that, I would invite your Ladyship, at the earliest stage in the course of the trial which is feasible and after reading Mr Berezovsky's witness statement, to read Mr Abramovich's because I suspect that --

MRS JUSTICE GLOSTER: I have read it.

MR SUMPTION: I see.

MRS JUSTICE GLOSTER: I have read the one you asked me to

read.

MR SUMPTION: This point is then redundant.

My Lady, the first critical question which your Ladyship will need to answer is: what was the nature of the deal which Mr Abramovich made with Mr Berezovsky in 1995?

It's common ground, as my learned friend told your Ladyship, that there was a deal. It's common ground that it included an agreement, first of all, that Mr Berezovsky would exercise political influence -- I think "lobbying" is his word for it -- to enable Mr Abramovich to obtain control of Sibneft. And it's common ground that once he got control, Mr Abramovich would be responsible for managing Sibneft. That is where the common ground ends.

The real issue is about the nature of the benefit that Mr Berezovsky was going to get out of this. Mr Berezovsky says that the deal was that he and Mr Patarkatsishvili between them were going to get half of Sibneft or at least of the proportion of Sibneft which was acquired by Mr Abramovich. What he says is that the cash stream that he got from Mr Abramovich represented a half-share of Sibneft profits corresponding to the half-share of Sibneft itself which he claims to have owned. That's Mr Berezovsky's case on

Sibneft in a nutshell.

Mr Abramovich says that this stream of cash represented Mr Berezovsky's fees for his political protection. There was, on Mr Abramovich's case, an informal understanding between them in early 1995 that Mr Berezovsky would require about $30 million a year to contribute to the funding of ORT. But Mr Berezovsky did not sell his influence for a fixed price; he demanded what he thought that he could get. As Sibneft prospered and Mr Abramovich was in a position to pay more, Mr Berezovsky demanded more.

The amounts paid, therefore, to or to the order of Mr Berezovsky were accordingly the subject of a continuous process of ad hoc negotiation in which Mr Berezovsky's bargaining power derived from the continuing importance of his political patronage as well as on Mr Abramovich's recognition that he owed him a debt of honour.

There were periodic agreements, therefore, about the amounts that would be paid in each year, but in fact these amounts were often exceeded. Moreover, as time went on, the proportion of the money that Mr Berezovsky received that went into ORT diminished and the proportion that went into building up Mr Berezovsky as a great figure in Russian politics increased.

By the late 1990s Mr Berezovsky's evidence is that substantially all his personal expenditure was being met from Mr Abramovich's companies and this was personal expenditure on a most exuberant scale: palaces in France, private yachts and aircraft, jewels for his girlfriend, valuable paintings at Sothebys and so on. The amounts which Mr Berezovsky received were never related to Sibneft's profits; indeed, Mr Berezovsky never even troubled to enquire what Sibneft's profits were. He didn't ring up Mr Abramovich and say, "How much have I got in the piggy bank now?" It was a continuous process of negotiation based primarily on Mr Berezovsky's needs and demands at the moment.

Now, there are, in our submission, three compelling reasons why this deal cannot have involved an interest in Sibneft or in its profits. The first reason is that Mr Berezovsky's case about this is not consistent with the way in which, between 1995 and 1997, the shares in Sibneft were actually acquired. It is very important to appreciate the sequence of auctions which occurred between December 1995 and May 1997 because this has, to some extent, been misstated in Mr Berezovsky's pleadings and evidence.

There were three stages. The first stage was the loans for shares auction in December 1995. Now, at this

stage Sibneft had been created as a joint stock company by a presidential decree which required the State to retain 51 per cent of the company's shares. The loans for shares auction was a sale of the right to lend money to the State on the security of that 51 per cent. The bidder who offered the largest loan would get first a pledge of the 51 per cent holding by way of security and secondly the right to manage that holding for three years. The latter would of course give the winner of the auction effective management control over the company but not ownership.

Now, it was expected, although by no means certain, that the state would default on the loan. In that event the lender would be responsible for conducting a sale by auction of the 51 per cent to the highest bidder. The critical point about the loans for shares auction is that the successful bidder in the loans for shares auction would not acquire any Sibneft shares at all either immediately or in the event of a default. If there was a default, clearly the manager of Sibneft could not both conduct the auction and bid in it.

That was stage one, therefore, of this three-stage process: the loans for shares auction in which what was being sold was the right to manage Sibneft but not shares in it.

Stage two was the sale, again by auction, of the remaining 49 per cent, the minority holding which the State sold off to private investors. That was achieved in the course of three successive auctions. 15 per cent was auctioned in December 1995, at about the same time as the loans for shares auction; another 19 per cent was auctioned in September 1996; and the final 15 per cent was auctioned a month later, in October 1996.

Stage three was after the State defaulted at I think the end of 1996, that event triggered the right of sale of the 51 per cent. The auction of those shares occurred in May 1997.

MRS JUSTICE GLOSTER: That's the investment auction?

MR SUMPTION: The investment auction, as it's sometimes called, the 51 per cent auction.

My Lady, the loans for shares auction of December 1995 was won by NFK. Ownership of NFK is dealt with in our written opening at paragraphs 52 and 74 to 75.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: In short summary, it was a company owned 50 per cent by Mr Abramovich, through an intermediate holding company called Vektor-A, and 50 per cent by Consolidated Bank. Consolidated Bank was the in-house bank of the Logovaz Group, over which Mr Berezovsky had

effective management control but a relatively modest shareholding. Mr Berezovsky owned, through a chain of intermediate companies, 13.7 per cent of Consolidated Bank, so effectively he had an indirect interest of 6.85 per cent in NFK.

There is an issue on the evidence about exactly what Mr Berezovsky contributed to the funding of NFK and its success in the loans for shares auction. It probably doesn't matter because we accept that Mr Berezovsky's role in the preparation of that auction was significant. It was his contacts which put us in touch with SBS Bank, which put up most of the money. Moreover, it was Mr Berezovsky and Mr Patarkatsishvili who played the leading part in rigging the auction.

What happened was that a bidder called Inkombank was disqualified on technical grounds. Ms Nosova, who was working for Mr Berezovsky, says, I think, that this was the work of her team. There was then a second potential bidder called Sameko, which was persuaded at the last minute by Mr Patarkatsishvili and Mr Abramovich to withdraw in return for money. There was then a third competing bidder, Bank Menatep, the only bidder who, in the event, participated in the auction. Mr Berezovsky made a collusive agreement with Bank Menatep that they would bid fractionally less than NFK; he tells us that

in his witness statement.

So the outcome of the bid was a foregone conclusion and that outcome was that NFK won the loans for shares auction with a bid of $100.3 million, which was fractionally above the minimum bid stipulated in the auction rules and less than half of what NFK would have been prepared to pay. Mr Berezovsky had another bid for much more in his pocket which he would have had to use if it hadn't been possible to buy off Sameko.

Now, none of the $100.3 million which NFK and its associated party in this bid, SBS Bank, was contributed by Mr Berezovsky or Mr Patarkatsishvili; none of it. The position is this: $3 million was borrowed by NFK on commercial terms from the Russian Industrial Bank. The other $97.3 million was lent to the State by SBS Bank, which was simply interposed as the lender, being a more creditworthy entity.

SBS Bank did not take any risk on that loan. SBS Bank took cash counterdeposits in the sum of $80 million from the Omsk refinery and Neftegas themselves, ie the businesses being acquired, and $17.3 million from Mr Abramovich's own trading company, Runicom.

So the position was that as between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili, the only one who

put up any money at all was Mr Abramovich. His company, Runicom, provided $17.3 million of the cash security which was given to SBS Bank.

Mr Berezovsky claims to have put up a personal guarantee in favour of SBS. That appears to be incorrect, although Mr Berezovsky did give a personal assurance that they would be repaid. It doesn't in fact matter because nobody, I think, suggests that a personal guarantee was actually called upon.

NFK's success in the loan for shares auction enabled Mr Abramovich to assume management control of Sibneft. It was, however, completely irrelevant to the question of title to the company's shares, which were not being sold in that auction. It's a very important feature of these arrangements that the only auctions in which Mr Berezovsky and Mr Patarkatsishvili actively participated was the auction of the right to manage the State's holding of 51 per cent. The only auction in which they actually participated, in other words, was the one auction which did not involve any acquisition of shares.

The auctions that mattered for the purpose of the acquisition of Sibneft shares were, of course, the auctions at what I have called stages two and three. They did involve the acquisition by the successful

bidders of shares in Sibneft. The striking thing about those auctions is that whereas Mr Berezovsky and Mr Patarkatsishvili were extremely active in relation to the loans for shares auction, they took no interest whatever in the auctions at stages two and three. This is, I think, common ground, but at any rate it is plainly the case.

Mr Berezovsky's witness statement says he had nothing to do with the bids made in those auctions; he was merely aware that they were happening. The decision to bid in the stage two and stage three auctions was Mr Abramovich's decision alone. It is not suggested that Mr Abramovich had ever promised that he would bid or in any way committed himself to bidding, either under the 1995 agreement so-called -- it's not suggested he was under any obligation to bid.

Moreover, 100 per cent of the funding for the bids that he chose to make, was provided by Mr Abramovich. Mr Berezovsky did not put up and doesn't claim to have put up a single cent towards the purchase of those shares; nor did Mr Patarkatsishvili. Moreover, subject to one twist which I shall come to, the companies which acquired Sibneft at stages two and three were all of them companies owned and controlled by Mr Abramovich.

The twist which I mentioned a moment ago concerns

a company called PK-Trast, which isn't mentioned anywhere in Mr Berezovsky's evidence but the facts about it appear in paragraphs 76 and 77 of our written opening B(C)/37. In very short summary, PK-Trast had an indirect interest in the company which acquired Sibneft shares in the cash auction of October 1996, the third of the three cash auctions at stage two. It also had a very small indirect interest in the company which acquired Sibneft shares in May 1997.

PK-Trast was a company controlled by Mr Abramovich but Mr Abramovich arranged for Mr Berezovsky to be made a 50 per cent shareholder at the time of the October 1996 cash auction in order to associate him with the bid and show effectively that he had the powerful man on his side. After the auction was over, Mr Berezovsky's shareholding was transferred back to Mr Abramovich's companies.

There was at one stage a claim in these proceedings arises out of that transfer back, but it was withdrawn and is no longer a matter of complaint. We are not aware that there's any live issue about PK-Trast now but your Ladyship can find the facts with references to the relevant documents in our opening.

The result of the auctions at stage two and stage three was that about 88 per cent of Sibneft ended up in

the hands of Mr Abramovich's companies. The other 12 per cent were acquired by the general public. The shares were traded on the Moscow and New York stock exchanges but the only actual trading on those exchanges was, of course, in the 12 per cent that Mr Abramovich did not own.

The absence of any funding contribution by Mr Berezovsky or Mr Patarkatsishvili to the acquisition of Sibneft shares is, in our submission, a matter of great significance. The case pleaded by Mr Berezovsky at paragraph 34 of the particulars of claim is that it was agreed in 1995 that any shares which any of Mr Abramovich, Mr Berezovsky or Mr Patarkatsishvili might acquire in Sibneft would be held for their benefit in the proportions 50/25/25. That's all. It isn't suggested that there was any agreement that any of them would actually bid. It is not suggested that there was an agreement that they would bid at any particular price. The only thing that is said is that if they did choose to bid and won, the shares thus acquired would be held in those proportions.

Crucially, it is not alleged, either in the pleadings or in Mr Berezovsky's evidence, that there was any agreement entitling whichever party acquired the shares to a contribution towards the cost of acquiring

them from the other two; nor, as I've told your Ladyship, was a contribution actually made.

So Mr Berezovsky's case appears to be that although Mr Abramovich was under absolutely no obligation to bid for Sibneft shares at all, he, Mr Berezovsky, was entitled to the benefit of a quarter of those shares for nothing. That is, in our submission, a most bizarre proposition.

As described by Mr Berezovsky, this agreement would have operated in the same way if Mr Berezovsky had decided to bid in stage two and stage three auctions instead of Mr Abramovich: he would then, it seems, have had to pay the price but Mr Abramovich would have been entitled to the benefit of 50 per cent of the shares for nothing. That's the logic of his position.

The absence more generally of any interest on the part of Mr Berezovsky or Mr Patarkatsishvili in the stage two and stage three auctions is, in our submission, just as significant as the absence of a financial contribution.

NFK, the successful bidder in the loans for shares auction, was a jointly controlled bidding vehicle controlled 50/50 by Mr Abramovich and Mr Berezovsky, although Mr Berezovsky's actual ownership stake was much smaller, as I've explained. Mr Berezovsky, as we've

seen, took a big part in the preparation for the loans for shares auction. When it came, however, to stages two and three, no attempt was made to set up a jointly owned or controlled bidding vehicle; it was simply left to Mr Abramovich to buy the shares for his own companies, with his own money, with no interest being taken in the process by the other two.

Now, the reason for the difference is reasonably clear and it's pointed out by Mr Abramovich in his evidence. Mr Berezovsky was never interested in acquiring industrial assets like shares in Sibneft, which, apart from anything else, would have required him to lay out money in buying them and investing. What interested Mr Berezovsky was getting management control from Mr Abramovich. He therefore took an active part in the auction of the right to manage Sibneft but none at all in the right to own it.

There is a very good reason why Mr Berezovsky should only have been interested in control and not in owning shares. The main reason for Mr Berezovsky's interest in Sibneft, according to his own evidence, is that the cash stream from Mr Abramovich would contribute to funding ORT. Now, that was urgent. It was urgent both because ORT was effectively bust when Mr Berezovsky took over the management of it but also because it was vital to

keep ORT funded during the lead-up to the presidential elections of June 1996 so that it could support Boris Yeltsin's campaign for re-election, as he had promised the president in 1995.

Owning shares in Sibneft was of no interest at all to Mr Berezovsky because it would not have helped him to fund ORT. Sibneft, as your Ladyship knows, was an amalgamation of two inefficient and loss-making State-owned businesses; they were inevitably going to take some time to turn round and make profitable. First of all, the two separate businesses had to be integrated into a vertically integrated company. Secondly, the entire culture had to be changed to transform a business which had previously been run by administrative direction -- effectively by officials -- into one responding to market signals.

Mr Berezovsky couldn't wait for that. We know that in the event Sibneft only became profitable in 1997 and then only marginally. It had to retain all its profits for reinvestment until 2001, when the first relatively modest dividend was declared by the company in respect of the year 2000 but actually in 2001. Mr Berezovsky couldn't wait for all that to happen. The cash stream from Mr Abramovich simply couldn't be dependent on Sibneft's prosperity because what Mr Berezovsky needed

was cash for his Krysha right now, in order to pay to ORT; otherwise the deal was no good to him.

Mr Abramovich's position, as your Ladyship will appreciate, was quite different. What Mr Abramovich wanted was management control. He wanted that because he wanted to amalgamate the two businesses and build up the company, with the result that any shares that he might buy in it at stages two and three would greatly increase in value. For as long as the State retained its 51 per cent holding, Mr Abramovich could only achieve management control and build up the business by acquiring the right to manage it in the loans for shares auction.

That brings me to the second main reason why Mr Berezovsky cannot have been entitled to the benefit of a quarter of Mr Abramovich's acquisitions and that is that the cash payments that flowed into Mr Berezovsky's coffers between 1995 and 2000 bear no relation whatever to Sibneft's profits or lack of them. These payments were not made from Sibneft's assets at all until 2000; they were made from cash in the hands of Mr Abramovich's oil trading companies in Russia and Switzerland. These companies were personal assets of Mr Abramovich which he had had and run well before 1995; they were the foundation of his pre-Sibneft wealth.

In 2000, for the first time, most of the payments to Mr Berezovsky or to his order did come from within the Sibneft group because the trading operations previously carried out by the trading companies had by then been incorporated into Sibneft itself. Mr Berezovsky's evidence is that these payments represented his share of Sibneft profits or possibly -- it isn't always clear -- his and Mr Patarkatsishvili's combined share of Sibneft profits.

That's a critical part of his case because Mr Berezovsky denies that these payments were made by Mr Abramovich in return for his Krysha; he says that they were payments to which he was entitled by virtue of his interest in a quarter of the shares held by Mr Abramovich's companies, they weren't payments for political favours that he had procured for Mr Abramovich's benefit. The deal made in 1995, as Mr Berezovsky describes it in his witness statement and pleadings, was that the three men would share out the profits attributable to their shares. That, he says, was what the payments he received from Mr Abramovich's companies represented.

With great respect, that is an impossible contention. It is impossible for a number of reasons which have not been addressed, either in my learned

friend's written opening or yesterday in his oral opening.

We do not have the banking or accounting records which would have enabled us to reconstruct precisely the exact scale of the payments to Mr Berezovsky and Mr Patarkatsishvili, although we have some of them. The separate trading operations effectively ceased to carry on business at the end of the 1990s. Sibneft was then sold to Gazprom in 2005. So that there is a dearth of accounting documents originating within those companies in the hands of Mr Abramovich and, correspondingly, Mr Berezovsky and Mr Patarkatsishvili have lost much of the documentation that they must once have had as a result of their flight from Russia and possibly in Mr Berezovsky's case as a result of his estrangement from Mr Fomichev, who actually conducted that side of his affairs.

What we do have is estimates from the individuals who handled these payments and who will be giving evidence to your Ladyship and also a contemporaneous spreadsheet recording in detail the position in 2000. This is a Excel spreadsheet which in due course I will be inviting your Ladyship to look at as a Excel spreadsheet -- it is not easy to look at it in hard copy and it's incapable of being loaded on to Magnum -- but

we will sort that logistical problem out in due course.

The first point to be made is that the payments to Mr Berezovsky began in March 1995 with a delivery of $5 million in folding money to Mr Berezovsky at the Logovaz Club, and evidence will be given by the person who delivered it. About $20 million to $30 million was paid out to Mr Berezovsky or to his order in the course of 1995, mostly not in cash, in dollar bills, but in bank transfers. That was, of course, before any management control had been acquired or any shares had been acquired by anyone. It follows that these payments cannot have represented Sibneft profits; they couldn't be anything other than Krysha.

Mr Berezovsky's response to this is to deny that anything was paid to him in 1995. He says that the payments began in 1996. Now, the evidence will show that it did begin in 1995, even if there is room for doubt about the precise amount of the payments. Many millions were paid to him.

The second point to be made about these payments concerns the payments made in 1996. These cannot have represented a share of Sibneft profits either because there weren't any Sibneft profits in 1996. Sibneft made losses in 1996, as everybody knew it would, because Mr Abramovich had only just taken over its management at

the beginning of 1996.

The third point to be made is that in 1997 and 1998 Sibneft made very modest profits; then in 1999 and 2000 it made rather larger profits. It is, however, impossible, even in the years when there were any profits there, to relate them to the payments made to Mr Berezovsky and/or Mr Patarkatsishvili. In 1997 and 1998, the payments made to or to the order of Mr Berezovsky substantially exceeded the entire profits of Sibneft, let alone the half of them that Mr Berezovsky says that he and Mr Patarkatsishvili were jointly entitled to.

In 1999 and 2000 the profits of Sibneft for the first time exceeded the payments made to Mr Berezovsky and Mr Patarkatsishvili but those payments bore no relation to the profits. This is particularly evident in 2000, when the surviving spreadsheet gives us precise figures.

2000 was a bumper year for Mr Berezovsky and Mr Patarkatsishvili: they received payments from Mr Abramovich's companies amounting in the course of that year to no less than $490 million, of which $461 million went to Mr Berezovsky and $29 million to Mr Patarkatsishvili. Apart from a sum of $30 million, Mr Berezovsky claims that all his receipts in 2000

represented a share of Sibneft profits. However, on any view, the sums that he received vastly exceeded what he claims to have been his contractual share.

The fourth point that one should make about these cash streams is that no dividends were declared by Sibneft until September 2001, when Sibneft declared a dividend of just $50 million in respect of the year 2000. All profits up to 2000 and most profits in 2000 were retained for reinvestment. Mr Berezovsky has therefore got to contend that the amounts that he received represented a share of the undistributed profits of Sibneft. Now, that would effectively have been a theft of Sibneft's funds and a fraud on the holders of the 12 per cent of the company's shares that were held by members of the public and traded on public stock exchanges inside and outside Russia.

There is a suggestion in my learned friend's opening that Sibneft profits should be taken to include the profits of Mr Abramovich's trading companies so far as they were derived from trading with Sibneft. What appears, as we understand it, to be said is that the profits of Mr Abramovich's personally owned trading companies --

MRS JUSTICE GLOSTER: This is the transfer pricing thing?

MR SUMPTION: Exactly -- were artificially fixed by transfer

pricing, which had the effect of transferring profit from Sibneft to Mr Abramovich's own companies.

The short answer to this, but not the only one, is that it has nothing to do with the agreement that Mr Berezovsky says was made in 1995, which was that he would receive the profits attributable to his shares in Sibneft. He does not claim and does not give evidence that the agreement was that he should share the profits which Mr Abramovich made on his own oil trading business, nor would such agreement have been consistent with what Mr Berezovsky does claim.

As a matter of fact there is no basis at all for the allegation about transfer pricing anyway and none is put forward by Mr Berezovsky in any of the evidence that he proposes to call either from himself or from others. The best source of information -- I won't turn it up at this stage -- about the trading relations between Sibneft and Mr Abramovich's trading companies in the late 1990s is the offering circular for the Sibneft Eurobond issue of 1997.

For the transcript and your Ladyship's note, the reference is bundle H(A)07/19/19. At pages 79 to 80 of that document in the bundle numbering, your Ladyship will in due course find a document or part of a document which explains how this worked.

Now, this was a document prepared to western standards, as the bonds were traded on western exchanges, and due diligence was done by the New York firm Cleary Gottleib. What is said in that document, which is correct, is that the crude oil sold to Runicom companies, Mr Abramovich's own companies, before March 1997 was sold at world market prices less a commission of about 2 per cent. From March 1997 onwards, crude oil was sold to the trading companies at full world market prices. Products, as opposed to crude oil, were sold to the trading companies at all times at current world prices. That continued until 2000, when the trading operations were, as I told your Ladyship in a different context a few minutes ago, taken in-house and vested in a subsidiary of Sibneft itself called Siboil.

There is no evidence in support of the transfer pricing allegation and the evidence indeed is against it. The witnesses who will give evidence, in particular Mr Shvidler, will explain how the system works insofar as it is not clear.

Mr Berezovsky says that the deal was that he was to be entitled to half the profits attributable to the shares in Sibneft which he claims to own or be entitled to. It is quite plain that if there really was an

agreement in those terms, Mr Berezovsky would have received absolutely nothing because until 2001 there were no dividends. So the profits attributable to his shares were zero until after he claims to have parted with this interest, yet he acknowledges that he actually received enormous sums of money. His receipt of those sums can therefore only be explained as payments for Mr Berezovsky's political services.

The third main reason why Mr Berezovsky's claim to be entitled to an interest in Sibneft's shares is a reason that can be much more briefly pointed out. Mr Berezovsky has consistently denied or allowed others to deny, at least until the early years of this century, that he had any interest. He has made a succession of public statements that he had no interest in Sibneft or in the ownership of Sibneft and that position, as far as his public statements are concerned, did not change until after he'd left Russia.

I'm not going to weary your Ladyship with all of these statements but two might perhaps particularly be mentioned. First, he omitted any interest in Sibneft shares from the declaration of assets which he was legally required to make in his capacity as a state official under the relevant Russian anti-corruption legislation. Secondly, Mr Berezovsky approved

a statement to investors about his position which was included in the Eurobond offering circular of 1997.

MRS JUSTICE GLOSTER: That's the one you just referred me to?

MR SUMPTION: Yes, I referred it to you for a different point --

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: -- but the other reason why that document is important is that it contains a paragraph which explains Mr Berezovsky's relationship with the company: basically that he has no shares in Sibneft and no interest in any shares in Sibneft but was involved in its creation.

MRS JUSTICE GLOSTER: What's the page of that? I have the circular on the screen.

MR SUMPTION: I think from memory it's page 5.

It's in the bundle numbering at page 34 at H(A)07. H(A)07/34. What it says is:

"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."

In our submission that statement is true. Mr Berezovsky, who acknowledges that it was referred to him -- and Ms Nosova confirms that she was consulted about it -- approved that statement. It's got to be his own case that he was perfectly happy to tell a lie to investors in public securities of Sibneft. In fact, this was an occasion when Mr Berezovsky realised that he had to tell the truth.

Mr Berezovsky proposes to call a number of witnesses to say that he privately claimed to have an interest in Sibneft at an early stage. In particular his old friend Mr Goldfarb is apparently going to say that this was something that was said to him as early as 1996. We will hear their evidence when they give it.

I will say at once that it's perfectly possible that Mr Berezovsky did occasionally brag to friends about his interests in this Russian large oil company in a way that he wouldn't have dared to do in public for fear of being authoritatively contradicted. But so far as we can discover -- and one hesitates to say that anything is not to be found somewhere in these 200 bundles -- there is no public claim by Mr Berezovsky to have owned

any interest in Sibneft until about 2003.

Now, as my learned friend Mr Rabinowitz told your Ladyship, we accept that Mr Berezovsky and Mr Patarkatsishvili can be shown to have told their own associates and advisers that they had a 50 per cent interest in Sibneft from late 1999 onwards. It is quite important to understand how this change came about.

In late 1999 Mr Berezovsky and Mr Patarkatsishvili began to look into the question of establishing an offshore structure of trusts and closed registry companies to hold their assets outside Russia. This is because they were concerned at the possibility that those assets might at some stage be attacked by adversaries within Russia, evidently the State.

Now, after a certain amount of planning among their own staff, Mr Berezovsky and Mr Patarkatsishvili approached an asset manager called Valmet, which later changed its name to MTM. Valmet in turn introduced them to a solicitor called Stephen Curtis of Curtis & Co. Valmet and Curtis & Co in fact shared a building off Park Lane. Valmet and Curtis & Co were both specialists in the creation of complex and opaque offshore structures for holding assets on behalf of super-rich individuals.

Both firms began to work for Mr Berezovsky and

Mr Patarkatsishvili at the beginning of 2000, when they were engaged in organising the receipt outside Russia of the proceeds of the sale of ORT. They were assisted in this endeavour mainly by Mr Fomichev, who was Mr Berezovsky's financial manager, and Mr Kay, who was a cousin of Mr Patarkatsishvili and performed similar functions for him, although at a rather lower level of competence and honesty. I will say why I say that in a moment.

One of the main difficulties which they encountered in the course of planning the offshoring of their assets arose out of EU and American money-laundering regulations which prevented western banks or other financial institutions from accepting significant sums of money without being satisfied, generally by documentary evidence, about their origin.

The significance of this problem cannot be overstated. It infected almost everything that Berezovsky and Patarkatsishvili did in the management of their financial affairs from 1999 onwards. These people, Mr Berezovsky and Mr -- would your Ladyship like me to --

MRS JUSTICE GLOSTER: No, I was going to go on until your next break, as it were.

MR SUMPTION: Yes, I will find a suitable place to stop.

These people, Mr Berezovsky and Mr Patarkatsishvili, were living a life of tremendous opulence, spending in Mr Berezovsky's case hundreds of millions a year and in Mr Patarkatsishvili's case tens of millions, although his house in Georgia is said to have been a wonder to behold. They both lived on income streams derived mainly from companies in which they had no documented interest at all.

Mr Berezovsky and Mr Patarkatsishvili would have found it difficult to get their money accepted by western financial institutions if they had explained that they were living on frequent and large payments made to them by a Russian industrialist for no reason of which there was the slightest documentary evidence. It was precisely the fact that these payments did originate in Krysha, paid by Mr Abramovich's companies, which gave rise to the money-laundering problem. If the payments had all been above board, they could have been documented and the money-laundering problem would have gone away.

I can't speak for the rest of Mr Curtis's practice but the function which Mr Curtis performed for these particular clients was to device schemes to launder their money. He did that with appropriate and gentlemanly reluctance after exhausting all other

possibilities. He uttered the occasional Pecksniffian platitudes about the importance of compliance, especially when discussing these matters with counsel, but on the face of his own files that is what Mr Curtis was for.

I will go into the details of how this was done or some of them, at least by way of summary, perhaps after the short adjournment if that would be a convenient moment.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(11.34 am)

(A short break)

(11.48 am)

MR SUMPTION: My Lady, can I just correct three minor points which I got wrong on going through the transcript when your Ladyship was behind the scenes.

First of all, the dividends. The $50 million dividend which I mentioned was in fact paid in November 2000 and not in the following year. In the following year, 2001, 16 August 2001, there was a much larger dividend payment, $612 million, but by that time Mr Berezovsky does not claim to have been a part-owner of Sibneft anymore.

So the timing and amounts of those dividends need to be corrected from what I told your Ladyship a few

minutes ago.

MRS JUSTICE GLOSTER: Yes. Can you just tell me the date of the second one?

MR SUMPTION: The second one was on 16 August 2001 and was for $612 million. I can give your Ladyship a reference if you would like one but it's H(A)37/146 and H(A)37/153.

Secondly, the free float of Sibneft shares held by the public was in fact smaller initially than the 12 per cent that I mentioned. The position, like everything else in this case, is a little more complicated. In fact, Mr Abramovich's companies at the end of stage three held 97.2 per cent of Sibneft but the holding was diluted over the following years as a result of the issue of American depository receipts and suchlike things and it gradually rose to 12 per cent by 2000.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: The third correction I should make, which is an unintentional slip-up of mine, concerns the time when Valmet and Curtis & Co began to work for Mr Berezovsky and Mr Patarkatsishvili. Valmet, so far as one can see from their documents, began to work on their affairs in early 2000 and Curtis & Co began to work on his affairs in January 2001. I by mistake said 2000. The first

thing they were concerned with was the dealings with the ORT proceeds.

When your Ladyship rose I was dealing with the question of money-laundering regulations. In practice the only reliable way of explaining the receipt of large sums of money was by presenting the receipt as the proceeds of the sale of an asset which the recipient owned. That is what they set about trying to do over much of the following years.

One can see this process at work in the very first document in which Mr Berezovsky and Mr Patarkatsishvili unequivocally claimed to have an interest in Sibneft, namely the Valmet memo of September 2000 at tab 10 of my learned friend's bundle, if your Ladyship still has that H(A)19/10. This document records the information which was given to Mr Samuelson of Valmet in the course of a meeting in the south of France with Mr Berezovsky and Mr Patarkatsishvili. It is, however, clear from the document itself that they had also spoken to Ms Nosova and Mr Fomichev and it is therefore possible that some of this information came from them, but it seems generally to be from the principals.

One can see, in a passage that my learned friend pointed out to your Ladyship at the top of the second page of the memo, that they claimed to have an interest

in Sibneft which they said:

"We will start by moving the Sibneft holdings into the funds..."

That's the funds -- perhaps one should start on the first page to get the context.

Your Ladyship will see on the first page that there is some reference to the way in which Mr Berezovsky operated in Russia:

"[He] recognised that media was key to political power and acquired ORT and TV6..."

And something is said about them and his other media assets:

"Most large Russian businesses needed political clout to be favoured in the State sell off of significant assets."

That is indeed so.

The document then goes on to describe the Hotspur and Octopus Trust structures and the assets that are to be put into them. What they then say is that they will be:

"... moving the Sibneft holdings in to the funds..."

That's into the offshore structures.

"... in about ten days. These holdings are owned through Cypriot companies mainly today. The relation between [Hotspur] and [Octopus] 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%."

Now, that of course was utter nonsense, as both Mr Berezovsky and Mr Patarkatsishvili must have known. They did not own any shares in Sibneft and certainly there were no shares in Sibneft owned by Cypriot companies of theirs. What they actually had was a stream of cash payments emanating from the owner of Sibneft, which they have claimed in the present action represented a contractual right to be paid a share of Sibneft profits. What they are doing here is presenting a stream of cash income as if it were the ownership of the asset. They could hardly say to Valmet, without immediately encountering money-laundering problems, anything else.

This point emerges most clearly from the next paragraph, which contains a reference to Aeroflot. Now, it's necessary to say something about Aeroflot and Mr Berezovsky's relationship with it. What is being said in this memorandum is that:

"[Berezovsky] and [Patarkatsishvili] also own a large stake in Aeroflot and Transaero..."

Just looking at Aeroflot, Mr Berezovsky and Mr Patarkatsishvili never owned any shares in Aeroflot. Mr Glushkov, who will be giving evidence on his behalf

to your Ladyship, says this:

"Boris was not involved in Aeroflot either as a director, shareholder, employee or otherwise."

And that is the truth. Their only financial interest in Aeroflot in fact arose from the fact that Mr Berezovsky had an interest in a Swiss company called Andava, which was essentially a joint venture between himself and Mr Glushkov.

When Mr Glushkov became director general of Aeroflot in 1996 he transferred the management of all its foreign currency treasury operations, which of course in the case of an airline are were considerable, to Andava, his own joint venture company with Mr Berezovsky in Switzerland. Thereafter these operations, the treasury operations in Switzerland, generated substantial interest and penalty payments, much of which ended up in the pockets of Mr Berezovsky and Mr Glushkov.

These were the transactions that led to the charges that were laid against Mr Berezovsky by the Russian public prosecutor in the autumn of 2000, which is what obliged him to flee from Russia in October of that year. They are the transactions which led to Mr Glushkov's arrest and subsequent conviction in Russia for theft. They are also the transactions which Mr Jenni assisted Mr Glushkov to carry out, according to the courts of

Switzerland, who have convicted him as an accessory to Mr Glushkov's frauds.

Your Ladyship will find the references to all of this at annex VI of our opening B(D)/109.

I fully acknowledge that there are legitimate issues about the fairness of Russian criminal proceedings in cases involving high-profile political figures. I doubt whether the same can sensibly be said of the criminal courts of Switzerland.

The relevance of this point for present purposes is that in explaining the source of their wealth to Mr Samuelson of Valmet, Mr Berezovsky and Mr Patarkatsishvili were quite clearly, in the case of Aeroflot, dressing up an unclassifiable stream of cash payments as an interest in the company itself when it was nothing of the kind and we say that they were doing exactly the same thing in the case of Sibneft.

Now, exactly the same point can be made about the explanatory note that my learned friend took your Ladyship to at flag 9 H(A)18/221.003T. If your Ladyship looks at the English translation of that document, this is a document which we can probably agree in due course is likely to have been prepared by Mr Joseph Kay. Mr Kay is identified as the author partly by his less than perfect Russian and partly by

the fact that, as we understand it from the family defendants, who first disclosed this document, it was found in Mr Kay's offices in London.

This document is a programme for dressing up Mr Patarkatsishvili's cash receipts as capital assets. It was prepared at about the time when Mr Berezovsky and Mr Patarkatsishvili were trying to shift their assets offshore. That is why your Ladyship will see, under the heading "Main. Structuring assets", which deals with the proposal to allocate assets to partners in proportion to their stakes, that among the assets which are going to be dealt with in that way is, as we see -- number 5 over the page -- Aeroflot.

Now, there can't really be any doubt that this memorandum is a programme for satisfying money-laundering enquiries which was explaining how a structure could be set up that would comply with what Mr Kay rather charmingly calls "the legal rules of the game", halfway down the second page of the memorandum, but was clearly not intended to reflect the true position; otherwise Aeroflot could hardly have been comprised in it.

Now, in the course of 2001, a string of bogus documents was confected by Mr Kay and Mr Fomichev, in some cases with the assistance of Mr Curtis, in order to

satisfy the money-laundering enquiries of western banks. This was done by presenting what were actually income streams as if they were the proceeds of capital assets or in some cases the undocumented proceeds of capital assets as documented proceeds.

This is the smoke and mirrors world in which your Ladyship has to work when trying to interpret documents of this kind. The first question that one has to ask about all of them is whether they are to be taken at face value, who was preparing them and why. The two most egregious examples, which are both documented in some detail, are the Spectrum transaction and the Devonia transaction.

The Spectrum transaction is described in our written opening at paragraphs 157 to 165 B(C)/67. In short summary, Spectrum was a vehicle owned by the Crown Prince of Abu Dhabi, Sheikh Sultan. Spectrum was used essentially to explain the receipt of the proceeds of the ORT sale, which is a genuine sale.

Now, the principal document which was prepared by Mr Curtis for Mr Berezovsky and Mr Patarkatsishvili purported to be a contract drafted in January 2001, executed some time later, by which Mr Berezovsky and Mr Patarkatsishvili sold a call option over their shares in ORT to Spectrum for $150 million. This document was

manifestly a sham because the shares at the time it was drafted had already been transferred to Mr Abramovich's company, Akmos, at the end of December. That was several weeks before the so-called call option was executed; it can never actually have been intended to operate as a call option at all.

Why was this document created? It was created because the formal agreements between Mr Patarkatsishvili and Mr Berezovsky on the one hand and Mr Abramovich's company Akmos on the other to sell the stake in ORT only dealt with $10 million of the agreed consideration. The other $140 million was paid to them outside that agreement.

Now, that meant that they only had a contractual document that accounted for a small proportion of the sum that they were receiving into the account which they had opened for the purpose at Clydesdale Bank. It was therefore necessary to invent a transaction which accounted for the whole $150 million.

So Mr Curtis drafted a document in which Mr Patarkatsishvili and Mr Berezovsky purported to sell to Spectrum an option. It is extremely probable that Mr Curtis was aware that the shares had been registered with Akmos already because we have a document that was supplied to him by Mr Ivlev, his correspondent lawyer in

Moscow, in which that was explained.

There is a second version of the Spectrum call option which we identify at paragraph 157(2) of our opening --

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: -- in which Mr Kay is rather mystifyingly described as the owner of some of the ORT shares.

MRS JUSTICE GLOSTER: I think it's 160(2).

MR SUMPTION: I'm sorry, I stand corrected.

Now, in the Valmore judgment, the judge, having heard the evidence, found that that version of the Spectrum document was forged by Mr Kay in 2002 in order to explain to Bank Hapoalim how he came to be paying 75 million into a company of his own that originated in the sums paid to Clydesdale Bank for the account of Mr Patarkatsishvili. He simply adapted Mr Curtis's draft so as to suggest that he also had an interest which he was selling and then presented that to explain the receipt of the 75 million.

There is a third version, the exact purpose of which we have not been able to discern, but which appears, for reasons which are set out in detail in our witness statement, also to have been a forgery. There is no reason to suppose that that third version and its forgery was anything with which Mr Curtis was concerned.

He was concerned with the version that we referred to in the first subparagraph.

Now, the Devonia transaction I will deal with later in a little more detail because it's critical to my learned friend's claim for loss. In summary, the Devonia transaction was another money-laundering scheme designed to explain how Mr Berezovsky and Mr Patarkatsishvili had come to sell their so-called interest in Sibneft without being able to produce a single contractual document or other documentary record of having done so.

The problem was they didn't have an agreement with Mr Abramovich to sell it or any other documentation of the sale to Mr Abramovich. So what did they do? They invented an agreement to sell their shares to Devonia, which was another vehicle company owned by Sheikh Sultan, and they used this document to mislead the European compliance officer of Clydesdale Bank.

This also appears to have been a scheme dreamed up by Mr Curtis, although I should mention that it is possible that Mr Curtis was simply acting on information supplied to him by Mr Fomichev. There are reasons for doubting that, but it is undoubtedly a possibility.

Now, my learned friend took your Ladyship yesterday to a number of documents which refer to the interests of

Mr Berezovsky and Mr Patarkatsishvili in Rusal. These documents were generally prepared by other parties to the various transactions in 2000 and 2004. None of them were seen at the time by Mr Abramovich, although one passed into the hands of Ms Khudyk and Ms Panchenko, whose functions -- essentially bookkeeping -- did not require them to study their contents. They will be dealing with that.

Now, the basic problem about most of these documents is that whenever any arrangement was made under which Mr Berezovsky or Mr Patarkatsishvili were to receive money, they always had to try to organise things so that documents would be generated which portrayed the money as the price of a proprietary interest in some asset. They can therefore not be taken as face value as evidence in these proceedings.

I will say a bit more about Rusal in due course. I am still basically dealing with Sibneft and explaining the problem which arises in the interpretation of documents from the fact that from late 1999 onwards Mr Patarkatsishvili and Mr Berezovsky were continually obsessed with the important problem of how to get their money in the west.

In a sense, the strongest point to be made in Mr Berezovsky's favour on the question of whether he has

an interest in Sibneft -- and my learned friend naturally has made it -- is that Mr Abramovich promised him a total of $1.3 billion in early 2001 and paid that amount in 2001 and 2002. What is said by my learned friend is that since Mr Berezovsky was no longer a powerful figure when these payments were agreed but an impotent exile, they can only be explained on the footing that Mr Abramovich was buying Mr Berezovsky's and Mr Patarkatsishvili's share of the company. There was no sense in paying Krysha at that stage.

Of course, one irony of this is that it is of course Mr Berezovsky's own case that the money which Mr Abramovich agreed to pay him for his share -- he agrees it was $1.3 billion -- actually bore no relation, he says, to the value of his share in Sibneft. He says it was a gross undervalue which he was induced to accept by intimidation. But the difficulty about much of this argument is this: if Mr Abramovich had obligations to Mr Berezovsky to account to him for Mr Berezovsky's shares and had wanted a way out of those obligations, his logical course was simply to refuse to recognise the existence of this wholly undocumented interest.

It appears to be common ground between the Russian law experts that in a Russian court the absence of documentation would have been fatal. It's arguable that

that's a procedural or evidential provision which therefore might be irrelevant in England but it's still relevant on the facts because in 2001 the parties can't possibly have supposed that a claim to an interest in a Russian company would come before any other court than a Russian court.

If -- which is the premise of Mr Berezovsky's argument -- Mr Abramovich was bent on getting out of his obligations, he didn't need to take a plane to Cap d'Antibes, he didn't need to threaten Mr Patarkatsishvili at Munich and elsewhere; he simply had to say, "Interest, what interest?"So much of this simply doesn't hang together.

Now, Mr Abramovich has given in his witness statement a detailed account of why he decided, in fact against the advice of his closest advisers, that he would make this very large payment to Mr Berezovsky and Mr Patarkatsishvili. His main reason was quite simply that he owed his business career to Boris Berezovsky and in fact had absolutely no desire to escape what he regarded as a strong moral obligation. He wanted to draw a line under the past and to put an end to the financial importunity of Mr Berezovsky on a basis that would satisfy him.

That explanation should, in our submission, carry

a good deal of weight, coming as it does from a man who had a complete let-out, if he wanted to take it, owing to the undocumented nature of the alleged interest. He could actually have paid Mr Berezovsky and Mr Patarkatsishvili nothing, simply defying them to try and establish their case in a Russian court. If he could have easily got away with paying them nothing because they had no interest which they could prove, then why should one assume that he was trying to evade his obligations at a cost of $1.3 billion?

Mr Abramovich's account of his reasons is wholly consistent with the code of honour that, on the evidence, was a substitute for legal obligation in the remarkable conditions of late 20th century Russia. But there was also another reason, which is also explained by Mr Abramovich in his evidence: he could not take it for granted that Mr Berezovsky was a spent force in Russian politics quite as readily as we can a decade later.

When Mr Abramovich agreed with Mr Patarkatsishvili in 2000 to make a final pay-out in the sum of $1.3 billion, Mr Berezovsky had only been in exile for three or four months. In the 1990s he had proved to be a remarkably resilient politician, recovering from apparently impossible situations and recovering

influence which at different times he appeared to have lost. Indeed, Mr Berezovsky had once been very close to Mr Putin and had helped to fund his election campaign in the year 2000. There was a lot to be said at the start of the Putin era in laying the ghosts of the 1990s to rest in case, in the perennially unstable cycle of Russian politics, they came back to haunt him.

Now, there is finally the historical evidence which we debated before your Ladyship in June, which has predictably turned out to take matters not much further forward.

The main point that my learned friend makes by reference to the historical evidence is that the pattern of privatisations in Russia at the time was that the parties who acquired the right to manage state assets under the loans for shares auctions invariably, it is said, acquired the shares through an associated company when the State duly defaulted and the pledged securities had to be sold. The paradigm of this is said to be the acquisition of Yukos by Mr Khodorkovsky and the acquisition of Norilsk Nickel and Sidanko by Mr Potanin. Why, my learned friend asks forensically, should one suppose that Mr Berezovsky should be an exception to such a well-established pattern and not have acquired an interest in Sibneft?

Some of the factual premise of this argument, the supposed pattern, is in fact wrong, as Mr Shvidler points out in some of his reply evidence; but the simplest answer to this is that the circumstances were completely different. Mr Khodorkovsky and Mr Potanin were primarily industrialists who wanted to manage and expand major industrial concerns, just as Mr Abramovich did, in the oil industry in the case of Mr Khodorkovsky and in the metals industry in the case of Mr Potanin. These people created huge and highly successful businesses out of nonperforming or previously nonperforming State assets.

Mr Berezovsky had absolutely zero interest in doing that. Mr Berezovsky was primarily a politician and power broker who made his money out of political influence. The management of industrial assets was something that he left, as he accepts, to Mr Abramovich. There is therefore nothing particularly surprising in the fact that Mr Abramovich owned the shares.

It's right to add that, as far as we are aware, Mr Khodorkovsky and Mr Potanin actually bought their shares in the enterprises that they built up. It may be that they acquired them cheaply but they were not in the position of Berezovsky, who claims to have acquired shares without paying anything for them at all.

We've been discussing the question of whether Mr Berezovsky had an interest in Sibneft but one needs to remind oneself, of course, that he doesn't claim to have one now. The existence of that interest is relevant because Mr Berezovsky claims that he was induced to part with it by intimidation for too little.

So I turn to the allegation of intimidation. Now, the curtain-raiser for the intimidation issue is a distinct allegation of intimidation relating to Mr Berezovsky's sale of his stake in ORT in December 2000. Mr Berezovsky doesn't make any claim against us in relation to ORT but this allegation of intimidation relating to ORT is nevertheless extremely important in his case.

He alleges that Mr Abramovich acted as a messenger for Mr Putin and his head of administration, Mr Voloshin, in conveying to Mr Berezovsky, at the meeting in Cap d'Antibes in December 2000, a threat that unless he sold his stake in ORT to Mr Abramovich two unpleasant consequences would follow: (1) the stake would be expropriated; and (2) Mr Berezovsky's friend Mr Glushkov, who had been arrested on 7 December 2000, would be kept in prison for a long time.

This part of Mr Berezovsky's case is critical to what he later says about being bullied into selling

Sibneft. In both Russian and English law there is a critical distinction to be made between a warning and a threat. A warning that unless you act in a particular way, a third party will take adverse action against you is not a threat and is not actionable. A threat must involve some indication of adverse action by the person uttering it.

Mr Berezovsky's case is that Mr Abramovich says that unless he sold out of Sibneft, the State would expropriate his interests in that and keep Mr Glushkov in prison; exactly the same sorts of threat. On the face of it, that's a warning. Mr Berezovsky seeks to turn that warning into a threat by saying that because of Mr Abramovich's behaviour at Cap d'Antibes, he interpreted the later warnings about the risk of expropriation by the state and prolonged imprisonment of Mr Glushkov as implicit threats that Mr Abramovich would bring about these results himself.

Now, as related to ORT, there is an air of unreality about the suggestion that the State, via Mr Abramovich, intimidated Mr Berezovsky into surrendering his control over ORT. Of course, the State or the government of Mr Putin had fallen out with Mr Berezovsky precisely over his use of ORT's media influence to serve his political ends, as the Russian government saw things.

Now, the problem is that the Russian State was and always had been a 51 per cent owner of the shares of ORT; it didn't therefore need to bully Mr Berezovsky in order to assume control of ORT. Mr Berezovsky says about this that the rights of the minority were entrenched under the company's charter but that is not in fact correct.

We've summarised the position at paragraph 301 of our opening B(C)/139. In short, the position was that the election of directors for ORT required a quorum at the general meeting of shareholders of ORT and the quorum was two-thirds of those registering to attend. Therefore, under that provision, the minority holding the 49 per cent could have blocked any valid general meeting simply by registering to attend and then failing to turn up.

It will not surprise your Ladyship to learn that the minority shareholders did not in fact have the right to obstruct the occurrence of a valid annual general meeting of a public company indefinitely. The charter provided that if a valid meeting did not occur, a further meeting had to be called at which the quorum would be reduced to 30 per cent. At that meeting, of course, a simple majority would approve decisions on the composition of the board of directors.

In addition to the provisions relating to the board of directors, the charter of ORT also provided that the broadcasting service was to be run by the director general, who had to be chosen from a list of persons approved by the president of the Russian Federation.

The State therefore, if it wanted to assume control of ORT, which it may well have done, did not need to force Mr Berezovsky to surrender his shares in order to achieve that. It had the means of making his shares impotent and depriving him of management control. The idea that the Russian State might have sent Mr Abramovich out to bully Mr Berezovsky into selling his shares is therefore rather far-fetched.

On the facts, however, this is rather more significant than that because it is perhaps the clearest example of a number of examples in this case of Mr Berezovsky having simply made up his story.

The alleged intimidation could only have occurred after the arrest of Mr Glushkov on 7 December because it related to Mr Glushkov's continued imprisonment, among other things. There is overwhelming evidence that the sale of the ORT stake had in fact been agreed in principle between Mr Abramovich and Mr Patarkatsishvili in the course of October and November. That agreement included agreement on the price which was ultimately

paid, $150 million.

Moreover, Mr Berezovsky actually publicly announced his intention to sell out of ORT in a telephone interview with a Moscow radio station on the very morning of Mr Glushkov's arrest; before, therefore, any meeting between him and Mr Abramovich could possibly have occurred.

The other problem about this story has been greatly exercising Mr Berezovsky and his advisers over the last few weeks and that is that there is no date between the arrest of Mr Glushkov and the execution of the sale agreements at the end of December when Mr Abramovich could have visited Mr Berezovsky at Cap d'Antibes because for most of that time both of them were elsewhere.

Mr Berezovsky told his solicitors in one of the interviews with Mr Patarkatsishvili in 2007 that this visit to Cap d'Antibes occurred on 17 December 2000. In his main witness statement for trial, which is broadly consistent with that, he said that the visit had occurred two weeks after the arrest of Mr Glushkov and a day or two before Christmas.

Mr Berezovsky was then presented with the clearest documentary evidence that he himself was in the United States, or flying there and back, between 16 and

27 December. He was also presented with evidence that Mr Abramovich was fighting an extremely public election campaign for the governorship of the Russian province of Chukotka between 10 and 24 December.

My learned friend says rather dismissively that Mr Abramovich has been trying to put forward an alibi. The main problem is that Mr Berezovsky himself turned out to have an alibi for his own alleged meeting: he was actually in the United States.

Mr Abramovich's alibi is mainly important to meet the case which has recently emerged from Mr Berezovsky. His solicitors have now conceded in correspondence that the alleged meeting cannot have occurred after 16 December 2000. They have served a further statement from Mr Berezovsky in which he says that he now thinks that this meeting occurred on the very day that Mr Glushkov was arrested or within a few days afterwards. This position is maintained, with much obduracy and artifice, in my learned friend's submissions in writing.

The facts are perfectly simple. Mr Abramovich met Mr Berezovsky and Mr Patarkatsishvili at Le Bourget Airport on 6 December and flew straight back to Moscow after that meeting. His passport stamps record that he entered Russia that evening and did not leave again

until 2 January. That material has been confirmed by the Russian border guard service from its own records in a letter supplied in response to a request for information on the point.

The records of the chartered aircraft which Mr Abramovich invariably used for flights in and out of Russia reveal no flights between 7 and 10 December, which on this theory would have to have been made, bringing him to France. Mr Abramovich was in Moscow throughout the period between 6 December and his departure for Chukotka on the 10th, and has accounted for his movements day by day by listing his appointments, most of them appointments with public officials, during that period.

Now, there has been an attempt to suggest that Mr Abramovich might, having flown into Le Bourget and had a meeting at the airport itself, have decided after all to stay overnight in Paris and then accompanied Mr Patarkatsishvili down to Cap d'Antibes the next day, when Mr Patarkatsishvili did travel there, which coincidentally happened on the very day that Mr Glushkov was arrested. That theory is, with respect, clutching at straws. So is the further hypothesis that Mr Abramovich might have flown into Moscow on 6 December and then straight out again to Paris on the following

morning, the moment that Mr Glushkov had been arrested, had lunch with Mr Patarkatsishvili in Paris on the 7th and then accompanied him down, after lunch, to Cap d'Antibes in the afternoon. These are fantasies that have been dreamed up for no other reason than that something fantastic like that would have had to have happened for the rest of Mr Berezovsky's story to be true.

The truth is that the Cap d'Antibes meeting is a deliberate fiction. It could not have got into Mr Berezovsky's evidence by an honest error. It's described in his evidence with a mass of circumstantial detail. It is said by him to be the turning point in Mr Berezovsky's relationship with Mr Abramovich, after which he says he never wanted to speak to Mr Abramovich again. I'll come back to that question a bit later.

This story of a menacing visit by Mr Abramovich to Cap d'Antibes in December 2000 is a fiction. It has been invented by Mr Berezovsky to give himself some kind of case to the effect that he was bound to interpret what Mr Abramovich is said to have said to Mr Patarkatsishvili as a threat of action by Mr Abramovich himself.

Now, turning to the major allegation of intimidation relating to Sibneft, the main problem that Mr Berezovsky

faces about this lies in dressing up the prospect of aggressive action by the State so as to make it into a threat of aggressive action by Mr Abramovich, which it has to be in order to be tortious. Whatever law governs the tort of intimidation, it has to be a threat of adverse action by Mr Abramovich.

Now, two threats are alleged to have been uttered by Mr Abramovich, both of which concerned, on the face of it, prospective action by the Russian State: the first was the threat that the state would expropriate Mr Berezovsky's and Mr Patarkatsishvili's alleged interest in Sibneft if they didn't sell out first; and the second was the threat that the State would keep Mr Glushkov in prison for longer. These alleged threats have somehow got to be transformed into warnings of action by Mr Abramovich.

Obviously the first difficulty about this is that Mr Abramovich was not in control of the acts of the Russian State. It is suggested, I think, by Mr Berezovsky that Mr Abramovich had become a man of great influence in the inner circle of President Putin, that he was a friend of the public prosecutor and that he was, generally speaking, an adept string-puller behind the scenes, but Mr Berezovsky has no evidence to support these suggestions. His argument that the ORT

sale could reasonably have given him that impression would, I would suggest, be far-fetched even if the Cap d'Antibes meeting had occurred in the manner Mr Berezovsky says it did.

Mr Berezovsky, of all people in the world, has good reason to know that President Putin is his own man. We all understand that Mr Berezovsky has strong feelings about President Putin's government but it cannot be suggested that Mr Putin is a patsy or that he allows himself to be manipulated by rich men in the way that, with regret, one must say that President Yeltsin had done.

Now, the facts are that the final pay-out of $1.3 billion -- or, as Mr Berezovsky would have it, the sale of his and Mr Patarkatsishvili's interests -- was negotiated between Mr Abramovich and Mr Patarkatsishvili in the first few weeks of 2001 and the agreement was reached in principle quite quickly, it seems by the end of January.

There was then, however, a delay in implementing that agreement because, as we can now see from the documents, Mr Berezovsky and Mr Patarkatsishvili wanted to receive the money outside Russia -- understandably enough -- in a form which would not give rise to either exchange control problems in Russia or money-laundering

problems in the receiving bank in the west. That involved a considerable amount of discussion between Mr Berezovsky and his advisers with lawyers, bank managers and so on in attendance.

The final arrangements were not agreed until May, when three meetings occurred between Mr Patarkatsishvili and Mr Abramovich at Munich Airport, Paris and Cologne. The Paris and Cologne meetings were also attended by the chief financial administrators of the principals: Mr Fomichev on Mr Patarkatsishvili's side and Ms Panchenko on Mr Abramovich's.

At the final meeting in Cologne on 29 May 2001, it was finally agreed that the first $500 million of the $1.3 billion would be paid in cash within a month and that the balance would be paid in stages over the year; not the calendar year, the next year. Now, the payments were made in accordance with that timetable into the account of Devonia, which was designated for that purpose by Mr Fomichev.

Mr Berezovsky's case is that it was in the course of the various meetings with Mr Patarkatsishvili that Mr Abramovich made his two threats. The expropriation threat is said to have been made as a continuous theme really during these meetings. The allegation in relation to the Glushkov threat is more limited: what is

said in the pleadings is that it was made at a meeting in Munich.

There are perhaps three main problems about this allegation of intimidation as well as a host of minor evidential difficulties which I won't trouble your Ladyship with at the moment.

The first problem is that all of the alleged threats are said to have been made by Mr Abramovich to Mr Patarkatsishvili on occasions when Mr Berezovsky agrees he was not present. The only witness who will be giving evidence of the relevant occasions is Mr Abramovich and, in relation to the meetings in Paris and Cologne, Ms Panchenko. Sorry, I'm told I've got her presence in Paris wrong: it's only Cologne, forgive me. Mr Abramovich denies uttering any threat and certainly Ms Panchenko did not witness one.

Mr Berezovsky, as I've said, wasn't present on any of these occasions and he relies, as far as one can see, entirely on the account which he says that Mr Patarkatsishvili subsequently gave to him. Unfortunately for Mr Berezovsky, his lawyers' waiver of privilege over their interviews with Mr Patarkatsishvili has resulted in the disclosure of the notes made of the interview with him and the draft proofs of evidence. At a later stage I will say a word about these in general

because they contribute something to an understanding of many aspects of the case.

These notes do show, as I accept, that by 2005, when the first interviews with Mr Patarkatsishvili took place, he was indeed asserting that he and Mr Berezovsky had had an interest in Sibneft which they had sold to Mr Abramovich. I have sought to explain why they were doing that. But the notes are completely inconsistent with any suggestion that there was some threat by Mr Abramovich either to bring about the expropriation of their stake or to prolong the imprisonment of Mr Glushkov.

The nearest that one gets in the interviews with Mr Patarkatsishvili to an allegation of a threat of expropriation is a suggestion by Mr Patarkatsishvili to the solicitors that Mr Abramovich was always complaining that the continued association of Mr Berezovsky with Sibneft in the public mind was damaging the interests of Sibneft.

On the subject of Mr Glushkov's position, Mr Patarkatsishvili said that he believed that if he and Mr Berezovsky sold out of Sibneft, Mr Glushkov would be released, but he makes it clear that that was not because of anything that Mr Abramovich said; it was because Mr Patarkatsishvili claimed to have received

a personal assurance to that effect from Mr Voloshin, the head of President Putin's administration.

Mr Patarkatsishvili was asked by the solicitors whether Mr Glushkov had been mentioned at the Munich meeting in May, which is when Mr Berezovsky claims the threat to keep Mr Glushkov in jail was uttered. Mr Patarkatsishvili's reply was that Mr Glushkov wasn't directly mentioned on that occasion; there was only a rather oblique reference to him, without mentioning his name, which is not said to have been accompanied by anything remotely resembling a threat.

Mr Patarkatsishvili makes it perfectly clear why he was in favour of selling out of Sibneft. The reason was that he and Mr Berezovsky were concerned that Sibneft as a company might be destroyed by the Russian government, just as we now know Yukos later was, and that Mr Berezovsky and Mr Patarkatsishvili, having become exiles, were desperately in need of funds to maintain their standard of living.

The next problem about the Sibneft threats is the extraordinary variation in Mr Berezovsky's account of the facts. In his early statements to the press, to the Metropolitan Police, to whom he made statements in relation to the investigation of the murder of Mr Litvinenko, and to my clients indeed in his letter

before action and in a number of other places, Mr Berezovsky described the threat as being that the State would take adverse action not to expropriate Mr Berezovsky's interest in Sibneft but to destroy Sibneft as a company.

That of course is exactly what Mr Patarkatsishvili describes in his witness statement as being Mr Abramovich's concern. That statement couldn't possibly have been a threat by Mr Abramovich himself. It can't seriously be suggested that Mr Abramovich was threatening to induce the State to destroy his own company just to spite Boris Berezovsky, like Samson pulling down the temple over his own head.

Mr Berezovsky's earlier account of the Glushkov threat was that Mr Abramovich had said, apparently at a meeting with Mr Patarkatsishvili in Munich in May 2001, that if they sold out of Sibneft, Mr Glushkov would be released. Now, that too bore some relation to what Mr Patarkatsishvili had said in the interviews but it manifestly wasn't a threat by Mr Abramovich against Mr Glushkov; as the Court of Appeal pointed out in the hearing of the summary judgment application, it was an inducement rather than a threat.

The pleadings assumed their current form, which alleges an implicit threat by Mr Abramovich to use his

influence in Russia to get their interest expropriated and Mr Glushkov kept in jail, only in the course of Mr Berezovsky's resistance to my client's application for summary judgment, after the Court of Appeal had pointed out that Mr Berezovsky's existing case did not appear to satisfy the elements of the tort. This reeks of invention by a man whose main concern is to navigate around the more awkward facts and the more awkward propositions of law by changing his story every time some unforeseen difficulty is raised about the previous version.

The third point that has to be made about this threat is that even in its current form the story doesn't hang together. How does the State set about expropriating what is now said to be a personal claim against Mr Abramovich under a Russian law joint activity or sui generis agreement, which is how we're told this 1995 agreement should be classified? What does it do to seize an interest of that sort? Presumably all it could do is legislate to vest the alleged contractual rights of Mr Berezovsky and Mr Patarkatsishvili in the State and then enforce them against Mr Abramovich. Is it going to be said that Mr Abramovich himself promoted that sort of expropriation? And how would it actually work, given that the rights would be worthless anyway in

a Russian court since they were undocumented?

Then again, if Mr Abramovich was trying to bully Mr Berezovsky and Mr Patarkatsishvili into releasing him from his obligations in respect of Sibneft shares, surely it is incomprehensible that he agreed, according to their evidence, to pay them a huge sum of money without seeking a release from them, because a release is, effectively, what Mr Abramovich was said to have asked for. He was bullying them, according to this story, into releasing him from his personal obligations to them in relation to the custody of these shares. Without a release how would Mr Abramovich ever know whether he had succeeded in his bullying?

Mr Abramovich's evidence is that he never asked for a release, as he surely would have done if he'd behaved in the way alleged, and it's not alleged by Mr Berezovsky that he got one. That could only be because Mr Abramovich did not understand Mr Berezovsky and Mr Patarkatsishvili to be releasing any obligation of his. If they weren't releasing anything, then where was the need to bully them?

There are, of course, a number of legal difficulties about these arguments even on the rather artificial footing, which we reject in its entirety, that the factual allegations are correct. The most notable of

them is that this claim cannot succeed unless either the tort is governed by English law, some law other than Russian law; or else, if governed by Russian law, the limitation period of three years can be extended by reference to some doctrine of Russian law.

We've set out in our written opening the grounds on which we say that Russian law was the proper law of the tort. I'm not going to argue that now. On the face of it, the critical fact is that the alleged threat was to do things in Russia which are unlawful, it is said, or illegitimate in Russia, with a view to causing damage in Russia to an asset -- the shares in Sibneft -- or a person -- Mr Glushkov -- located in Russia. So Russian law would appear fairly clearly to apply.

Turning to the Russian law extensions issue, on which Mr Berezovsky has to succeed if Russian law governed the tort, the exception relied on is primarily Article 205 of the Russian Civil Code, which is said to extend the limitation period if it can be shown that the limitation itself presented Mr Berezovsky from suing earlier than he did. There is an alternative argument which depends on exactly the same facts but reliance on limitation is, in the circumstances of this case, an abuse of rights.

Both of those points depend for their facts upon the

proposition that Mr Berezovsky could not bring this action earlier than he did because he didn't dare to sue while Mr Glushkov was still in Russia and liable to be kept in prison or, once released, reimprisoned. Mr Glushkov didn't in fact leave Russia until July 2006.

It is pretty clear that this factor had no impact on Mr Berezovsky's conduct at all. Throughout the period when Mr Glushkov was in Russia, Mr Berezovsky was threatening and hectoring the Russian government in speeches and press interviews in a manner which is quite inconsistent with his supposed sensitivity to the position of Mr Glushkov.

If the problem about starting this action is that it would be thought liable to upset the Russian government to a degree that would adversely impact on Mr Glushkov, well, it is hard to imagine anything that Mr Berezovsky could have done to upset the Russian government more persistently than he actually did. Not only that, but he publicly announced his intention to bring this action four years before he actually did so; something which he surely wouldn't have done if he really thought that litigation against Mr Abramovich was liable to put Mr Glushkov in danger.

Before I leave the intimidation claim and turn to the Rusal claim, I ought to say a brief word about the

Devonia agreement, which I mentioned in another context a few minutes ago. Leaving aside a couple of unarguable estoppel points about which my learned friend is commendably reticent in his written opening, the Devonia agreement is the sole basis on which Mr Berezovsky claims to have suffered loss.

The Devonia Agreement purported to be an agreement by which Mr Berezovsky and Mr Patarkatsishvili sold an equitable interest in their Sibneft shares to a vehicle company, Devonia, belonging to Sheikh Sultan. The argument is that the equitable rights of Mr Berezovsky and Mr Patarkatsishvili were sold to Devonia with a view to their being sold on by Devonia to Mr Abramovich and that it was the sale of his assets to Devonia that constituted his loss.

One problem about this argument -- though not one I'm going to develop at the moment -- is that Mr Berezovsky didn't have an equitable interest in Sibneft to sell to Devonia, as he now accepts, yet that was what the Devonia contract purported to transfer. But that is a trivial problem by comparison with the more fundamental issue about the Devonia agreement, which is that the whole agreement was a sham.

Now, this is one area of the case which is relatively well documented. It is tolerably clear that

it wasn't a genuine sale but an artificial transaction designed to satisfy the money-laundering enquiries of Clydesdale Bank, into which Mr Berezovsky and Mr Patarkatsishvili had arranged for the money to be paid. There is no doubt that some of the documents relating to the Devonia transaction did pass under Mr Berezovsky's eyes and that some discussions about it occurred, although it may well be that he did not see all of those documents; Mr Fomichev, however, unquestionably did.

The main evidence on this point is going to be given by the only surviving partner of Curtis & Co, who I think he was a salaried partner at the time, Mr Jacobson. I should make it clear that it is not my case that Mr Jacobson was himself personally involved in any of the more surprising activities of Mr Curtis. He was involved in the transaction but he was involved very much in a subordinate capacity. He was asked to draft documents to this, that and the other effect; he did so, and so on. The essential decisions were made, so far as we can see, by Mr Stephen Curtis in conjunction with Mr Fomichev.

Now, the basic problem which the Devonia transaction was designed to address was that in order to satisfy the Clydesdale Bank's due diligence, they had to show the

Clydesdale Bank documentary evidence that the funds originated in the sale of an identifiable asset which they owned. So what they told the Clydesdale Bank was that the money was the proceeds of sale of an equitable interest in Sibneft, the legal title to which was owned by Mr Abramovich. In order to do that, they of course needed a documented sale.

Now, in the ordinary course they could have been expected to produce a written agreement with Mr Abramovich. Of course they couldn't do that. Mr Abramovich was clearly not going to sign a document recording a sale to him of an interest in Sibneft shares; that wasn't the nature of the deal that Mr Patarkatsishvili had made with him. Indeed, they never even asked him to sign a document of that kind. Documents like that were drafted by Mr Curtis but Mr Abramovich was never even asked to sign them; they perfectly well knew what the response would be.

So they had to pretend that they had sold their interest not to Mr Abramovich but to Devonia and that Devonia had then sold it on to Mr Abramovich. That would enable them to produce the sale contract with Devonia as evidence of the origin of the funds. The money would then be passed through Devonia's bank account and from there to Clydesdale Bank.

Now, the sheikh was induced to play his part in this charade by the promise of an exceptionally large commission, well over $200 million, which he would deduct as the money passed through Devonia's accounts.

The author of the scheme appears to have been mainly Mr Curtis, who successively acted for both Mr Berezovsky and Mr Patarkatsishvili and for the sheikh. Mr Curtis also received, with the express consent of Mr Berezovsky, who signed a consent form, a personal commission of $18.3 million out of the funds for taking part in this transaction in addition to the professional fees of his firm, which amounted to £461,000.

Now, the bank, of course, expressed understandable surprise that the sheikh was proposing to buy from Mr Berezovsky and Mr Patarkatsishvili for $1.3 billion an undocumented interest in a Russian company which Mr Berezovsky's solicitor, Mr Curtis, himself described as a rather nebulous right.

It was also explained to Clydesdale Bank that it was not going to be possible to get any document recording Mr Abramovich's acknowledgement that he held an equitable interest for Mr Berezovsky and Mr Patarkatsishvili. That, of course, was a bit of a problem, at least for the, I have to say, relatively credulous European compliance officer of Clydesdale

Bank. The parent company in Australia hit the roof when it reached them. But various yarns were spun in order to reassure the bank.

Essentially Mr Curtis told them this. What he said was that the nebulous character of the interest being sold to the sheikh did not need to worry them because Mr Abramovich would be buying the interest from the sheikh under a mirror transaction. Moreover, Mr Curtis said that Mr Abramovich would be depositing the full amount of the payments with Devonia in a secured account in advance of Devonia committing itself to Mr Berezovsky and Mr Patarkatsishvili.

So what was being explained to the bank was that Devonia would be fully protected against the nebulous character of the transaction because they would have an absolute right beforehand of resort to Mr Abramovich, who would have secured it with 100 per cent deposit in Devonia's accounts.

Meanwhile, it was said, since the bank clearly were not willing to accept that the money should be paid straight out of the security account opened by Mr Abramovich into Clydesdale Bank, effectively just going round in a circle, that wouldn't do, so Mr Curtis told the bank that Mr Abramovich would deposit the money by way of security in an account of Devonia but the

sheikh would use his own funds, other than that, in order to make the payments to Clydesdale Bank.

All of that was a complete fiction. Mr Abramovich had no dealings with Devonia or the sheikh. He was unaware of their involvement until 2002, when Mr Patarkatsishvili approached him and asked him to indemnify them against the considerable costs that they had incurred in getting the money to a western bank account and Mr Abramovich agreed to pay more.

Mr Abramovich was unaware of the details of the Devonia transaction until after disclosure was made in these proceedings. In fact there was no contact between Mr Abramovich and Devonia or the sheikh, there was no on-sale, there was no advance deposit; the money simply went round in a semicircle from Mr Abramovich to Devonia to the Clydesdale Bank in exactly the way that Mr Curtis assured them would not be happening.

None of those who come out of the Devonia transaction come out of it with any credit, yet that is the whole basis -- apart from the alternative estoppel cases -- on which loss is claimed as a result of this intimidation.

Mr Rabinowitz spent most of his time yesterday dealing with the Rusal claim, although more than five-sixths of his loss is said to have arisen from the

allegation of intimidation. We have, after 727 pages of written submissions and four hours of opening, very little knowledge about how he proposes to show that the large payments that his client received really represented profit share or that Mr Abramovich intimidated him either at Cap d'Antibes or with his later meetings with Mr Patarkatsishvili; nor, of course, do we know how he proposes to show that the Devonia agreement on which his loss depends was a real transaction.

I don't say this by way of criticism but my learned friend is giving your Ladyship his hundred best tunes and he cannot reasonably be expected to dwell upon the clanking din which his clients are making below.

There remains my learned friend's emotional statement at the outset of his submissions yesterday that as a result of the way that Mr Berezovsky was treated on Sibneft, two close friends became declared enemies. How, he asks forensically, is that to be explained other than by reference to this kind of cataclysmic happening?

Your Ladyship can, I think, take it for granted that Mr Abramovich is no friend of Mr Berezovsky's now. But the attempts to relate the change of sentiment to what happened in December 2000 is a little extravagant. It

exaggerates both the closeness of these two men before that date and the distance afterwards. Mr Abramovich's evidence is that, with the benefit of hindsight, he would hesitate to call Mr Berezovsky a close friend in the 1990s, although he did feel a strong emotional bond to him.

The evidence shows that there wasn't in fact a sudden break after December 2000. From early 2000 Mr Abramovich had already been seeing less and less of Mr Berezovsky in any event. There was a perfectly amicable meeting in Megeve between them, which Mr Berezovsky denies, in January 2001, less than a month after the alleged intimidation relating to ORT, which was actually witnessed by Mr Sponring.

Mr Berezovsky's public statements about Mr Abramovich are quite amicable until about 2002. The first time that Mr Abramovich realised that Mr Berezovsky was not happy was in December 2002, when he read an article in which Mr Berezovsky said that he didn't know him. He discussed this, according to his evidence, with Mr Patarkatsishvili, who told him he should ignore it.

It is right to add, as that little incident perhaps shows, that throughout 2002 to 2008, right up to today, Mr Abramovich was on perfectly good terms with

Mr Patarkatsishvili, although Mr Patarkatsishvili was, if Mr Berezovsky's story is right, just as much the victim of this alleged behaviour as he, Mr Berezovsky, was.

Now, of course, by December 2000 Mr Berezovsky was in exile. As the years went on, he became increasingly bitter; he made more and more serious allegations against Mr Putin and the Russian government. None of this was a good reason for Mr Abramovich to be seen to be friends with him. The evidence in fact is that the break was the result of the festering feeling in Mr Berezovsky's breast that he had somehow been done out of things which developed in the course of the first decade of the present century, relatively slowly at that.

My Lady, the next thing I want to turn to is Rusal and I don't suppose you want two minutes of that before lunch.

MRS JUSTICE GLOSTER: That would be a very convenient moment, so that you can all get out before the rush. Very well. I'll sit again at 2.05.

(1.57 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: My Lady, the first point to be made about the Rusal claim is that it cannot be looked at, so to speak, in a self-contained compartment in isolation from the Sibneft claim. That's not only because major issues of credit affecting the evidence of both sides will arise from the evidence about Sibneft which may well colour your Ladyship's view about their evidence on Rusal but it's also because the question whether Mr Berezovsky or Mr Patarkatsishvili had an interest in Rusal is closely bound up with the question whether they had an interest in Sibneft.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: There are two reasons why that is so. The first is that Mr Berezovsky says that under the 1995 agreement it was agreed that if any of the parties embarked on any future business venture other than Sibneft, the others would share it in the same proportions.

Now, that contention is disputed, along with most of the other terms of the alleged 1995 agreement, but this is the agreement on the basis of which Mr Berezovsky claims that the parties in 1999 decided jointly to participate in the original acquisition of the aluminium assets which in the following year they then merged with those of Mr Deripaska. So it is rather a critical part

of their case that this all happened pursuant to what they say was agreed in 1995.

The second reason why they are interconnected is that, as in the case of Sibneft, Mr Berezovsky did not contribute a single cent to the cost of acquisition of the relevant assets. I don't think that it is his case this time that he was entitled to participate for nothing; that would be absurd. What he says is that his share of the price of the aluminium assets was to be satisfied from his share of Sibneft profits.

Now, that contention only works if the 1995 agreement entitled him to have a share of Sibneft profits and if there were some Sibneft profits to apply in satisfaction of his contribution to the price. Now, I've already explained why there were actually no Sibneft profits to which Mr Berezovsky could have been entitled and why the sums which he received can't have been Sibneft profits.

It is worth pointing out --

MRS JUSTICE GLOSTER: Well, because even in the plenty years his share exceeded, you say, the percentage of the profits attributable?

MR SUMPTION: Yes, exactly. They bear no relation -- in the plenty years they exceeded it and they were paid before the company had been acquired and indeed before it had

made any profits and they were unrelated to dividends as well.

It's perhaps in that context worth pointing out that Mr Berezovsky and Mr Patarkatsishvili got $490 million between them out of Mr Abramovich's companies in the year 2000; that is to say the year in which it is alleged that the aluminium assets were to be paid for out of Mr Berezovsky's profits or share of profits. Now, that means that it must be contended that Mr Berezovsky and Mr Patarkatsishvili were entitled to treat as satisfaction of their contribution to the price of the aluminium assets a sum in excess of the $490 million which they were actually paid. This perhaps suggests that their case requires one to suppose that this great pot of Sibneft profits was almost infinitely elastic.

Now, the first and fundamental question that your Ladyship will have to address under this head is which law governs the alleged English law trust said to have existed between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili. It is common ground, as my learned friend told your Ladyship yesterday, that the Rusal claim can only succeed if it is governed by some law other than Russian law because in Russian law there cannot be a trust and a claim would be time-barred

anyway.

Now, therefore the selection of the proper law -- this is a rare case in which the selection of the proper law, which is itself of course a question of English private international law, is absolutely critical to the outcome of this claim irrespective of the facts. It is not suggested in the context of the time bar that applies to the Rusal claim that there is any Russian law basis on which that time bar can be ignored or extended.

Our submission on the proper law is set out at considerable length --

MRS JUSTICE GLOSTER: I've got it, page --

MR SUMPTION: -- in our opening from paragraph 465 onwards B(C)/220 and I'm only going to deal briefly with it at this stage, mainly for the purpose of identifying what appear to be the facts relevant to considering it.

There are two planks to my learned friend's case that English law applies: the first is that it applies by express agreement at the Dorchester Hotel meeting; the second is that it applies by implication from the fact that a number of other agreements executed in the course of the merger arrangements with Mr Deripaska were expressly governed by English law and that Mr Berezovsky had good reasons for, at any rate, not wanting it to be governed by Russian law.

The first of those points, express choice of law, is a pure question of fact which your Ladyship is going to have to decide. Both Mr Justice Coleman and the Court of Appeal, in giving judgment on the summary judgment hearing, made some somewhat critical comments about this contention and the circumstances in which it came to be advanced.

I do not suggest to your Ladyship that there is something inconceivable or absurd about choosing English law to govern an arrangement between Russians about Russian assets. I do suggest that it must be most unusual to have an express choice of English or any law for that matter to govern an oral agreement. I've certainly never heard of parties saying, "We're not going to write down our agreement but our oral exchanges are going to be governed by the law of X". If you want to have an express choice of law, you have a written agreement.

As Lord Justice Burnton pointed out in the Court of Appeal, commenting on the suggestion from Mr Berezovsky that at the Dorchester Hotel meeting it was agreed that the parties would conduct their affairs in a proper British law way, that being the phrase that I think Mr Berezovsky claims was used, the proper British law way to deal with these matters is to write it down.

That didn't happen.

Now, an express choice of English law was first alleged as a direct response to Mr Abramovich's application for summary judgment. That application relied upon the fact that Russian law doesn't recognise the concept of trusts. Dr Rachkov, Mr Berezovsky's expert on Russian law, agreed with that proposition, thus making it essential, if Mr Berezovsky's case was to remain on the rails, that he should find some basis for saying that Russian law didn't apply.

The problem for Mr Berezovsky is that if, as he now says, he has a clear recollection -- and he claims to have a clear recollection of this -- of agreeing English law at the Dorchester Hotel, then he doesn't have any explanation of his failure to rely on this at any earlier stage of the proceedings.

Allegations that somebody has changed his approach in the course of the pleadings are not always terribly persuasive in commercial litigation and they can sometimes become rather a tedious theme of a complicated case, but that depends upon the particular nature of the allegation and the circumstances in which it was made. This is an allegation about an express exchange which a party claims to have clearly remembered which has a significant impact on a major part of the case.

The whole question of proper law was much canvassed in the course of the litigation, naturally enough, given its importance for the outcome. We have summarised at paragraph 480 the essential stages of that story. I know your Ladyship has read this and I'm not therefore going to go through it in detail.

Perhaps the most significant single episode in that history, as your Ladyship will see, what was pleaded originally was not that there was an express choice of English law; indeed, it wasn't really alleged that there was an implicit choice of English law either. What was said is that Mr Berezovsky's intention was that it should be some law other than Russian law and therefore the court should assume that it was English law or possibly BVI law or possibly French law.

Perhaps the most significant episode in the interlocutory history relating to this aspect of things is the submission which Ms Dohmann QC, then acting for Mr Berezovsky, made to His Honour Judge Mackie in April 2008, which your Ladyship will see covered in paragraph 480 of our written opening.

MRS JUSTICE GLOSTER: Subparagraph 4, is it?

MR SUMPTION: It's subparagraph 8 in fact.

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: Now, at that hearing she presented a revised

draft pleading and she said that this draft was the result of a considerable amount of hard work by Mr Berezovsky's team which was directed to showing that the proper law was not Russian but either English law or BVI law. That led, as your Ladyship will see on the following page -- subparagraph 9 -- to a request for further information and an answer from Cadwaladers which we quote.

That answer is an explanation not of why the parties had a common intention that the proper law should be English law; it's simply an explanation of why the parties, in Mr Berezovsky's submission, had a common intention that the proper law should be something other than Russian law. It is therefore not relying on any express agreement.

In his reply Mr Berezovsky relied on an inference as to the parties' intentions which is spelt out in the passage from the pleading which is quoted in our subparagraph 11, if your Ladyship would be kind enough just to read through that part. (Pause)

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

MR SUMPTION: That pleading was verified by a statement of truth signed by Mr Berezovsky.

If Mr Berezovsky distinctly recalled his phrase that there was an express choice of English law at the

Dorchester Hotel meeting, then the answer had always been simple and indeed conclusive. Mr Berezovsky's team had never needed to rely on an implicit choice of some law -- possibly one of a number -- other than Russian law. Ms Dohmann and her team had never needed to groan and travail over the question what the proper law was, in the manner suggested to His Honour Judge Mackie. There was a perfectly simple answer: that Mr Berezovsky's sudden recollection within a few months of the service of that pleading of something which he had distinctly recalled all along but failed to mention to any of his solicitors is simply beyond belief.

This issue therefore, in our submission, depends on whether there was an implied choice of English law, in the sense that that was the implied intention of the parties, or an imputed choice of English law by virtue of English law being the law which is most closely connected with the transaction. As Ms Dohmann correctly perceived, it is not easy to come up with English law by a process of implication or imputation.

The case that there was an implied choice of English law is essentially founded on the express choice of English law in other agreements. These agreements which your Ladyship was shown yesterday by my learned friend have nothing to do with the relevant private

international law question. They are all concerned with the acquisition by Mr Abramovich of the aluminium assets and the merger of those assets with those of Mr Deripaska. They were not concerned with the distinct arrangements that Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili are alleged to have made among themselves as to how their interests would be shared out and how they would be held.

Now, English law did not in fact govern the critical agreements into which Mr Abramovich entered. The agreement of 10 February which dealt with the KrAZ and BrAZ aluminium sellers, which is at tab 2 of the bundle that your Ladyship was taken to yesterday -- for the record, this is H(A)17/33 -- was not governed by English law. Likewise the preliminary agreement between Mr Deripaska and Mr Abramovich at tab 1, the reference to which is H(A)16/47T in the English translation, is not governed by English law either, although it did envisage, as one can see at the end, that the definitive agreement which was in due course expected to supersede it would be governed by English law.

Now, Mr Berezovsky was not a party to --

MRS JUSTICE GLOSTER: Is that not a pointer?

MR SUMPTION: It may be a pointer, but perhaps not when you are dealing with a large number of interlocking

agreements, some of which are governed by English law and some of which are not. But I can quite see that it could be a pointer.

Now, Mr Berezovsky was not himself party to any of the agreements containing an English choice of law provision unless he was a party by virtue of being a "partner" or "another party represented", to quote the various phrases that appear in some of these documents. Mr Berezovsky appears to have been, so to speak, an undisclosed principal behind Mr Abramovich to the preliminary agreement but he does not claim even to have been aware of that agreement at the relevant time; he does not claim that he was aware of these documents. His evidence is that he wasn't involved in deciding on or implementing the various structures which were used to acquire and then merge these assets and it does not seem that he saw them. He is simply hitching a lift on the documents a decade later.

It follows from that that these documents cannot be treated as part of the factual matrix against which to interpret the distinct trust which is alleged to have been created by agreement at the Dorchester Hotel. They do help my learned friends to say, as I accept, that it isn't inconceivable that there could have been an express choice of English law, but they do not get one

any closer to finding that there was an implicit choice of English law.

In deciding whether there was an implicit choice of English law, in our submission the obvious weight would need to go to the fact that this was an agreement made in Russian about Russian assets between Russians, all of whom were at the time resident in Russia. The normal inference, certainly as a matter of English private international law, is that a trust is governed by the law of the settlor's residence or the trustee's residence, that being where you would have to pursue him in order to enforce the trust, and that was Russia.

Now, that is an oversimplified summary of what is necessarily rather a complicated position because these issues are determined by the Hague Convention but they're not wholly determined by the Hague Convention. In other words, as you work through the successive questions that the Hague Convention requires one to answer, you can reach a stage where you get no answer under the Hague Convention and you have then to resort to the common law. That is likely to be the position here.

What is, however, absolutely clear is that as a matter of English law, the fact that the implied choice of law would lead one to a law which does not

recognise trusts is not a ground for escaping the operation of that law. That principle is absolutely fundamental because as a matter of English PIL it is well established that the parties may implicitly choose a law to govern their transaction under which it is not valid.

If Russian law applies, that is the end of the Rusal claim, as my learned friend accepts. This is therefore an issue of very considerable importance. If English or some similar law applies -- and there's no suggestion of any difference between English, French or BVI law -- then it will be necessary for your Ladyship to decide (1) whether the agreement alleged to have been made at the Dorchester Hotel was in fact made; and (2) if it was made, whether it included the term alleged by Mr Berezovsky that none of Mr Abramovich, Mr Berezovsky or Mr Patarkatsishvili would sell their shares in Rusal without the agreement of the others.

The evidence of Mr Abramovich, Mr Shvidler and Mr Deripaska is that no agreement was made at the Dorchester Hotel. There was a discussion in general terms of a merger agreement that had in fact already been made some time earlier and made without any involvement on the part of Mr Berezovsky. Mr Berezovsky himself turned up an hour late to this meeting.

There was no agreement about the mutual relations between Abramovich, Berezovsky or Patarkatsishvili at all. The alleged agreement that none of them would sell the shares without the other is denied by all three witnesses present at the meeting, whom I shall be calling. It is also, interestingly enough, inconsistent with the notes that were taken of Mr Patarkatsishvili's evidence. Those notes do not record any agreement that an English law trust was to be created.

Mr Patarkatsishvili, judging by the notes, obviously thought that Mr Abramovich ought not to have sold without reference to him but he never suggested that there had been an agreement to that effect; his point was simply that it was contrary to what he described as Russian practice. If there had been an agreement not to do so, an express agreement not to sell without reference to the other parties, then surely Mr Patarkatsishvili would have said so.

Now, I can't usefully expand on those points in opening. Your Ladyship will have to assess the evidence on each side as it is given. What I can perhaps do at this stage is to comment relatively briefly on the submissions which my learned friend made about the reference to "partners" in the preliminary agreement and about the various documents produced after the alleged

agreement by other parties, not by Mr Abramovich, in which it was suggested that Mr Berezovsky and Mr Patarkatsishvili had an interest.

The reference to "partners" in the preliminary agreement is a matter which is dealt with by Mr Bulygin in his witness statement. We do not know whether we will be able to call Mr Bulygin, he has been very ill. We will call him if we can, but otherwise his witness statement will have to stand uncross-examined as his evidence. But what he says is that there was no discussion of the possibility that Mr Berezovsky or Mr Patarkatsishvili were Mr Abramovich's partners; for his part, he assumed that Mr Shvidler was Mr Abramovich's partner.

The clause in question was inserted, as he explains, mainly in order to deal with the possibility -- this is clause 4.1, which refers to "partners" -- that the Trans-World Group might be standing behind Mr Abramovich. Mr Deripaska had fallen out with the Trans-World Group, essentially the Cherney brothers, and he didn't want to see them coming back in under Mr Abramovich's cloak.

This is a reminder of one of the critical factors about the background against which one needs to look at these documents: all of them had to be viewed in the

context in which these individuals were operating.

The agreements were entered into against the background of the so-called aluminium wars in which -- and I think this is common ground -- the profitability of the aluminium industry had been reduced to next to nothing by racketeering and violence in the aluminium-producing areas. Nobody trusted anybody else. The practice of dealing through opaque structures of nominee holdings and so on meant that nobody could be sure that they could know who they were actually dealing with.

As Mr Bulygin points out, nobody actually knew if Mr Abramovich was really going to pay for the assets or, if he did, was going to pay for them with his own money. Mr Deripaska did not know if Mr Abramovich was really buying the assets or whether Messrs Cherney and the Trans-World Group were really involved behind him.

Mr Shvidler, who signed the preliminary agreement, will give evidence of the circumstances which lay behind these particular agreements, why they were worded in this way, and so will other Russian witnesses who were involved in the negotiations.

The various memoranda which came into being after the agreement are another matter. Those are documents which came into being after 2000, for the most part,

within the Patarkatsishvili camp or the Deripaska camp or the Berezovsky camp. Those documents, in our submission, hardly justify the time which my learned friend devoted to them.

The most significant documents are those included in the list at tab 8 of the bundle my learned friend handed up, which is H(A)18/221.001T, where they are listed as items 5 to 8. These documents are contracts between Mr Patarkatsishvili and the acquiring companies under which Mr Patarkatsishvili contracted to receive a commission for negotiating the deal; something which is hardly consistent with his being a principal.

Mr Patarkatsishvili must have regarded these instruments, the so-called protocols, as reflecting the true character of his involvement in these transactions. The reason for that is that Mr Patarkatsishvili brought these four protocols before a Moscow notary on 16 March 2000 and had them formally notarised in order to preserve them as evidence. 16 March was just three days after the Dorchester Hotel meeting at which Mr Berezovsky says that they agreed a totally different deal under which Mr Patarkatsishvili was a principal and not an intermediary.

Now, certainly Mr Abramovich, as well as Mr Patarkatsishvili, regarded the protocols as

reflecting the real nature of Mr Patarkatsishvili's involvement; but, as my learned friend told your Ladyship yesterday in answer to your Ladyship's questions, the four protocols were never acted on and the money was never paid. The reason for that is explained in Mr Abramovich's witness statement, where he says that he and Mr Patarkatsishvili agreed that they would wait and see how matters developed.

It is obvious as a matter of inference that Mr Patarkatsishvili hoped that if the aluminium deal went well, he would earn an even larger commission. As it turned out, he was absolutely right about that. At any rate, he couldn't do earn less because Mr Abramovich had at least agreed to pay him that.

The other documents to which your Ladyship was taken are all documents devoted to the familiar problem of trying to dress up an income stream as a capital asset so that the money can be received into western banks without undue suspicion about its origins. That certainly seems to be true of the explanatory note at tab 9 H(A)18/221.003T to which I took your Ladyship this morning, the document prepared by Mr Kay, although in the absence of any oral evidence about its origins, that must be a matter of inference. Particular doubts attach to any document which can be shown to have

emanated from Mr Kay, as this one did.

MR RABINOWITZ: Sorry to rise. My learned friend keeps asserting that this is Mr Kay's document as if this were common ground or an established fact. I just want both my learned friend and your Ladyship to be clear that that isn't in fact the case.

MRS JUSTICE GLOSTER: I think you said "the most likely contender", or maybe Mr Sumption said that.

MR RABINOWITZ: It started with Mr Sumption saying "the most likely contender", telling us that his client thought this was in bad Russian and that therefore it meant this was Mr Kay. I have to say that that is not agreed.

MRS JUSTICE GLOSTER: Right, okay. You don't dispute it was found in Mr Kay's office?

MR RABINOWITZ: I don't dispute it was found in Mr Kay's office, that's right.

MR SUMPTION: The inference -- I can quite see that the word "probably" should probably have appeared in my last sentence, but "probably" is good enough for your Ladyship.

If this document was prepared by Mr Kay, particular doubts attach to it. As I told your Ladyship this morning in another context, in the Valmore action Mr Kay was found to have forged one of the Spectrum documents. Indeed, it is said by Mr Berezovsky in the Chancery

proceedings that Mr Kay also forged a deed of appointment and letter of wishes appointing himself as executor of Mr Patarkatsishvili's assets. Mr Kay is a defendant in the Chancery proceedings but I understand that he has not been seen for quite a long time.

The same concern with money-laundering problems explains the rather peculiar form in which the sale of the second tranche of the Rusal shares to Mr Deripaska went through in July 2004. In 2004 the problems arising from money-laundering regulations must have been absolutely intolerable for Mr Patarkatsishvili.

The Clydesdale Bank, whose European compliance officer had been effectively deceived into agreeing to accept the Devonia monies in May 2000, refused to accept any more of it in August as a result of a decision by their Australian head office. They also required Mr Berezovsky and Mr Patarkatsishvili to close the accounts as soon as possible. Unfortunately, it took them more than three years to find another bank willing to accept balances that had already built up in the Clydesdale Bank accounts before the Clydesdale Bank required the accounts to be closed. So the money was effectively frozen because they couldn't transfer it anywhere; in large numbers of cash withdrawal machines perhaps.

Now, this experience almost certainly explains the odd way in which Mr Patarkatsishvili agreed to receive his commission on the Rusal transaction.

Mr Patarkatsishvili had made a very significant contribution to the success of the aluminium deal. He had personal contacts with most of the people involved, which Mr Abramovich did not have. He negotiated many of the agreements. Critically, after the acquisition and merger of the assets Mr Patarkatsishvili played a very significant role in putting an end to the gang warfare and racketeering which had come close to destroying the industry, thereby enabling it to resume its profitability, to the considerable benefit of its owners.

Mr Abramovich's evidence is that he ultimately agreed to pay Mr Patarkatsishvili a commission of $585 million, that agreement having been made in August 2003. The problem to which that gave rise was the familiar problem of how that was going to be got into a western bank account, Mr Patarkatsishvili being now an exile living in Europe. So Mr Abramovich later agreed with Mr Patarkatsishvili that he would transfer the second tranche of the Rusal shares to him in lieu of commission so that he could then sell them to Mr Deripaska in his own name. The proceeds of that sale

could then, in all honesty, be presented to western banks as the price of a capital asset.

Now, it's clear from the Bryan Cave memoranda to which your Ladyship was taken yesterday, and indeed from a fair amount of other evidence, that Mr Deripaska was concerned that Mr Berezovsky might have an interest in assets that were being acquired by Mr Deripaska from Mr Patarkatsishvili. It was the case that he was acquiring them from Mr Patarkatsishvili but Mr Deripaska was understandably concerned about that because Mr Berezovsky had been claiming in the press that he had an interest in those assets. It therefore occurred to Mr Deripaska and his legal advisers that if he contracted with Mr Patarkatsishvili alone, Mr Berezovsky might have a claim against him at some subsequent stage.

This problem was ultimately dealt with by Mr Patarkatsishvili warranting that he was the sole beneficial owner of the shares that he was selling in Rusal and by Mr Abramovich entering into a deed with Mr Deripaska acknowledging that he, Mr Abramovich, had dealt with no one else and that Mr Deripaska could therefore take it that the beneficial interests were those declared by Mr Patarkatsishvili and no others.

Mr Patarkatsishvili was genuinely selling to Mr Deripaska but he had only temporarily acquired the

assets for the purpose of enabling him to receive money from an asset rather than an income stream. Now, Mr Patarkatsishvili had no interest in Rusal other than the interest in the second tranche which was created for him at the time when that tranche was sold. Mr Berezovsky, in our submission, never had an interest in Rusal unless possibly he had one by virtue of the alleged partnership agreement between himself and Mr Patarkatsishvili.

We do not know the answer to that question. My learned friend is not entitled to rely on that as a route to a proprietary interest because of your Ladyship's ruling that he may not base a claim on that. We simply do not have the documentary resources -- they are mostly disclosures in the Chancery action which we haven't seen -- which would enable us to deal properly with it.

But if Mr Berezovsky had an interest, it can only have been by that route. If he had an interest then, however that interest arose, it seems clear on Mr Berezovsky's own evidence that he claims to have authorised Mr Patarkatsishvili to negotiate with Mr Deripaska and Mr Abramovich for the sale of that interest to Mr Deripaska on behalf of both of them; that is what he says.

Moreover, the way in which the various parties are defined would include Mr Berezovsky, simply looking at the definitions.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Now, the transaction which was negotiated in consequence, including a release executed by Mr Patarkatsishvili on behalf of those within the definition, including therefore Mr Berezovsky, in favour of Mr Abramovich from a wide range of liabilities including those of the kind which he is now asserting. So if Mr Berezovsky lost out on this basis, that is something which he resolved by the deal with which the last tranche was sold back to Mr Deripaska in July 2004.

Now, I have, notwithstanding my misgivings about separating them wholly, dealt separately with the two sides of this case, Sibneft and Rusal, because it seems in the interests of coherence to be the right way of doing it. As it has developed, Mr Berezovsky's claim to have had an interest in both Sibneft and Rusal has turned out to be heavily dependent on just two pieces of evidence, namely the Le Bourget transcript and the Curtis note. I will say a brief word about each of those documents as well as about Mr Patarkatsishvili's interview notes.

Now, I'm not going to take up your Ladyship's time

on the Le Bourget transcript for very long because it would take a very great deal of time and both Mr Berezovsky and Mr Abramovich will be dealing with it in their evidence in due course. The problem about the transcript is that it is, in most places, obscure and the discussion can only be understood against the background against which the parties were speaking. They were discussing a large number of recent transactions which had given rise to accounting one way or the other between them and unless you understand what those transactions were, it is quite difficult to follow what is being said on the transcript.

Now, there's a detailed line-by-line commentary on the transcript by both Mr Berezovsky and Mr Abramovich which your Ladyship can study in parallel columns in the annex at E6 E6/01/1. The problem that Mr Berezovsky has in dealing with the discussions at Le Bourget is that, as he freely admits, he himself was not in fact familiar with the detailed earlier transactions which were being discussed at Le Bourget because they were concerned with various technical methods of getting money out of Russia and satisfying money-laundering enquiries.

His commentary is therefore largely speculation about a discussion which he must have had as much

difficulty in following as we do; indeed rather more. This was the kind of technical financial operation which he was in the habit of leaving partly to Mr Patarkatsishvili and partly to his financial manager, Mr Fomichev, neither of whom, of course, will be able to assist your Ladyship with their evidence. Well, Mr Fomichev would be able to but he's not going to be called.

We have identified the main relevant passages for the purpose of these points in our opening at paragraph 269 and summarised the evidence each way about them.

Turning to the Curtis note, that is discussed in our written opening at paragraphs 504 and 505 B(C)/245. We do not say that Mr Curtis fabricated this note. We do not say that. What we say is that it is not reliable evidence of what was said.

We are unlikely to want to cross-examine Ms Flynn, although we have held off actually saying that because there remain --

MRS JUSTICE GLOSTER: She's the lady who put the sticker on it?

MR SUMPTION: The lady who put the sticker on it.

The only reason that we have not formally confirmed that we don't need to cross-examine Ms Flynn is that we

understand there is a further group of Curtis & Co documents which has been identified and which are being examined, I think, by Addleshaws -- oh, by the Curtis estate's solicitors, DLA, and we believe we may get more documents. In case we do, we are reluctant, so to speak, to let go of a witness who may be able to throw light on them.

But we certainly don't deny, on the facts as we presently know them, that Mr Curtis came back at some stage from Georgia and gave this document to Ms Flynn with instructions that she was to keep them because they were vitally important.

The background to the Curtis note appears to be -- and there are many questions about the Curtis note which are difficult to answer dogmatically -- that Mr Curtis, at some earlier stage in 2003, had drafted -- in fact the draft is dated April -- presumably on the instructions of Mr Patarkatsishvili, an agreement between Mr Patarkatsishvili and Mr Abramovich; an agreement under which Mr Abramovich would have transferred 25 per cent of Rusal to him.

Now, that agreement does not seem to have been discussed with Mr Abramovich; it is simply a document that emerged from the Curtis files. It was, as we understand it, a project. Now, this document may have

been prepared because Mr Patarkatsishvili wanted to document an interest which he claims to have already but which was only equitable and which he needed to make into a legal interest or at any rate an interest which was available for proof in documentary form; or it may have been a prototype for what was in fact later agreed between Mr Patarkatsishvili and Mr Abramovich in October, when Mr Abramovich agreed to transfer shares to Mr Patarkatsishvili in lieu of commission. We don't know.

One way or the other, however, it appears to have been a document which was prepared in order to give Mr Patarkatsishvili a documented right to something, presumably for money-laundering purposes. It looks as if at the meeting in Georgia Mr Curtis deliberately set out to find some evidence that Mr Patarkatsishvili was already interested in the Rusal shares. He seems to have concluded that in fact Mr Abramovich was not likely to enter into his draft agreement of April and was therefore looking for some other evidence of an interest.

The note appears to have been an attempt by Mr Curtis to create evidence out of a conversation which in fact he cannot possibly have understood because the conversation was in Russian, as Mr Tenenbaum says and as

one would indeed expect, a language which Mr Curtis did not understand.

Now, Mr Tenenbaum will tell your Ladyship that nobody was taking a note as far as he can recall. Both for that reason and because Mr Curtis knew no Russian, somebody must have told Mr Curtis what he was to write down after the meeting was over, presumably in the absence of Mr Tenenbaum. We don't know who that person was: it might have been Mr Patarkatsishvili; it might have been Mr Fomichev, who was among those present; I suppose it might have been the mysterious Igor, who was the other person said to have been there.

Mr Tenenbaum was the only person who appears to have been present at this interview who will be giving evidence at this trial. Mr Fomichev will not be called. Mr Tenenbaum's evidence is that the exchanges recorded in the note did not occur in his presence.

Your Ladyship was told yesterday there were certain details that only Mr Tenenbaum could have known. That is not, as we understand it, correct. The details to which he was referring are details which, for various reasons, would have been known to Mr Fomichev as well because they would have been known in the course of arranging payments, which was one of Mr Fomichev's responsibilities.

Now, there is finally the material garnered from Mr Patarkatsishvili before his death by Mr Berezovsky's solicitors. I have acknowledged in my written opening, and my learned friend Mr Rabinowitz acknowledged on his feet yesterday, that there is something for both sides in this material. In particular I acknowledge that the interview notes with Mr Patarkatsishvili are consistent with his having asserted an interest in both Sibneft and Rusal and I have explained why it was very much in his interest to say that in 2005 and indeed had been for a number of years before that.

The material is, however, inconsistent with every other aspect of Mr Berezovsky's case, although a bit less so in the case of the material arising from the interviews in 2007 than the interviews in 2005. Your Ladyship may therefore have to form a view about the relative reliability of these two stages in the process of interviewing Mr Patarkatsishvili.

Mr Rabinowitz submits that the 2007 material is more reliable but, if one thinks about it for a moment, that really can't be right. The 14 December 2007 draft of the witness statement for Mr Patarkatsishvili which your Ladyship was taken to yesterday, in particular is a document to be treated with really very considerable reserves. It was never seen by Mr Patarkatsishvili or

commented upon by him, and that is quite clear from the witness statements of Mr McKim and Ms Duncan. It is equally clear that the prior draft of the statement wasn't shown to Mr Patarkatsishvili either.

Contrary to my learned friend's submission yesterday, it was not in fact prepared by lawyers who had a more detailed or considered understanding of the case than had been true of their predecessors in 2005. In fact the lawyers that prepared this draft proof, Mr McKim and Ms Duncan, were very new to the case: they had only been instructed for the first time in October 2007.

The proof contains controversial paragraphs that appear to have been lifted bodily either from Mr Berezovsky's evidence or from the particulars of claim, which had been drafted in September 2007. They were simply slotted into the previous Patarkatsishvili drafts and therefore stand, I suppose, as something that the solicitors hoped Mr Patarkatsishvili might say.

Now, the two meetings in November 2007 in Tel Aviv that preceded that draft witness statement were both attended by Mr Berezovsky as well as Mr Patarkatsishvili, with Mr Berezovsky apparently dominating the discussion and doing the translation. Mr Patarkatsishvili's English improved over the years of

experience of life at Virginia Water but it can never be said, I believe, at any stage that his English was proficient.

The lawyer that created these draft witness statements accepts that he did in fact include information gleaned at the meeting which had been provided from both Mr Berezovsky and Mr Patarkatsishvili without distinguishing between the two. Mr McKim makes that point at paragraph 34 of his witness statement.

For all of those reasons, far more likely to be reliable is the earlier proof of evidence that two experienced lawyers had put together after the June 2005 meeting. It is significantly more proximate in time to most of the relevant events. Mr Berezovsky was not there, so there's no difficulty about distinguishing his views from what Mr Patarkatsishvili was saying and no question of his having influenced Mr Patarkatsishvili. Moreover, this was before the particulars of claim was issued, so that there was no question of the solicitors trying to find material to support a particular case. It is therefore as close to a neutral account of Mr Patarkatsishvili's recollection as one is likely to get.

Now, looking at the 2005 material as a whole -- and in fact, in spite of what I've been saying, the 2007

material is not that different -- the 2005 material first of all indicates that there was a meeting, not at Cap d'Antibes, regarding the sale of ORT and that Mr Abramovich acted in relation to ORT as what Mr Patarkatsishvili described as "a trusted intermediary".

Now, it was recognised as self-evident by Mr Patarkatsishvili that Mr Abramovich himself had no power to obtain Glushkov's release, which had been promised to Mr Patarkatsishvili directly by Mr Voloshin. So Mr Patarkatsishvili's recollection is destructive of the ORT intimidation allegation.

Secondly, the 2005 notes and drafts show that the $1.3 billion transaction in relation to Sibneft was in fact initiated by Mr Patarkatsishvili, who sought out money in order to fund his and Mr Berezovsky's exile. He was also, as the notes show, concerned about the undocumented nature of his interest and the lack of management control over Sibneft: factors which undoubtedly were liable to depress any value it might have had.

This is entirely inconsistent with the suggestion of intimidation in relation to Sibneft. All that Mr Patarkatsishvili says about this is that Mr Abramovich made it a regular theme of his discussions

with Mr Patarkatsishvili that the Russian government was likely to damage the interests of Sibneft as a company if Mr Berezovsky remained associated with it.

Thirdly, these notes indicate that the interest in Rusal was, as Mr Patarkatsishvili put it, "to be held in the same way as our Sibneft shares", ie, one would suppose, under Russian law.

The reason why it was wrong for Mr Abramovich, in Mr Patarkatsishvili's view, to sell the shares first was not because it was a breach of an English law trust or because there had been an express agreement not to do so; because, as he put it, in Russia, if you go into a project together, you can't dispose of your shares in breach of oral agreements and normal principles of business. What was understood by Mr Patarkatsishvili was governed, as he thought it, by Russian practice, not by express agreement.

Perhaps the most telling fact is that if Mr Berezovsky has got a case on either the Sibneft or the Rusal side of this dispute, then Mr Patarkatsishvili had the same case, neither better nor worse. Yet Mr Patarkatsishvili has never asserted any claim against Mr Abramovich; indeed, on the Sibneft side he is recorded in the notes as saying that he was perfectly happy with the outcome.

There is some evidence that Mr Berezovsky put pressure on Mr Patarkatsishvili to join in this action but that he would not do so. Now, in our submission, Mr Patarkatsishvili's reticence about running an action or participating in an action which his recollection of events did nothing to support is a very telling indication of its merits.

My Lady, unless there's any other matter that your Ladyship would like me to deal with, that is all that I need to say in opening.

Can I turn to the next items on your Ladyship's agenda.

MRS JUSTICE GLOSTER: I think I'm going to hear from Mr --

MR SUMPTION: No, all I want to do is just -- I will deal with that later, yes, if your Ladyship --

MRS JUSTICE GLOSTER: I was going to hear from the others.

MR SUMPTION: Yes, absolutely. Okay. I'll deal with that later.

MRS JUSTICE GLOSTER: What I'll do is I'll take the break now for ten minutes. Thank you very much indeed, Mr Sumption.

(3.02 pm)

(A short break)

(3.12 pm)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

Opening submissions by MR MALEK

MR MALEK: Your Ladyship has read the skeleton so what I was proposing to do was cover two topics: first of all, why the Anisimov defendants are here; and then to explain how we see our participation at the trial, and that is tied in with any questions relating to trial management.

Why are we here? Five short points.

First of all, I wish to cover the question of how we fit into the various actions brought by Mr Berezovsky. As your Ladyship knows, we appear for the Anisimov defendants: that's Mr Vasiliy Anisimov personally and companies related to him. They're described in paragraph 15 of our skeleton B(G)/01/6: it's Coalco International and Coalco Metals. As your Ladyship knows, the action with which we are concerned is the Metalloinvest action and that's one of three actions commenced by Mr Berezovsky.

As your Ladyship knows, there are going to be conjoined Chancery Division trials that are due to take place in October. There are two phases to those trials and phase 2 is concerned with tracing issues and is dependent on Mr Berezovsky succeeding in phase 2. My learned friend Mr Adkin is going to say something about those actions, so I can move on to my next point, but simply stressing that we are defendant parties only to

the Metalloinvest action and we're only concerned with Rusal-related issues.

The second point goes to the question of the scope of the trial. One of the key issues is of course whether Mr Berezovsky had any interest in Rusal or more accurately whether he acquired what he describes as ownership interest in Rusal and that is the issue with which we're concerned. This trial will determine a number of issues relating to Rusal and the various routes by which Mr Berezovsky makes a claim.

As the court pointed out in its July 2010 judgment at paragraph 28, a trial of the Rusal issues once and once only is sensible, achievable, desirable and fair, it being common ground that the joint venture claim based on the alleged bilateral joint venture between Mr Berezovsky and Mr Patarkatsishvili will be left over and determined in the Chancery Division.

I just simply make one request at this stage, which is I wonder whether we could refer to Mr Patarkatsishvili as "Badri", as I think your Ladyship did in the joint judgment.

MRS JUSTICE GLOSTER: Yes. Well, I don't mind as long as nobody characterises that as disrespect to him, but I'm sure they won't.

MR MALEK: Lord Justice Longmore referred to him as AP, but

it doesn't matter. On that basis we will proceed.

MRS JUSTICE GLOSTER: Very well.

MR MALEK: So the Rusal issues will be determined here subject to that point about the joint venture between Mr Berezovsky and Badri. We say that there is no scope for Mr Berezovsky to raise additional Rusal issues in the Chancery Division, that being the point that there should be determined only once only and that is here.

The third point relates to the overlap issues. We've covered that in our skeleton submissions, it's paragraph 28 B(G)/01/15, and it's taken from the conjoined order of 16 August. As we point out at paragraph 29, there are two further issues which arise in the Abramovich action only but which are relevant to Mr Berezovsky's claim in the Metalloinvest action.

Just one other reference to the joint judgment at paragraph 35, where it is said this, and I quote:

"It is, for example, possible that evidence given in such statements might point to the desirability of additional issues or factual matters being resolved as overlap issues in the Abramovich action in a manner binding on the defendants in the Chancery actions."

All we would say at this point is that the overlap issues are now closed, subject to any variation in the overlap issues arising out of the amendment application,

which is the matter that next arises.

The fourth point we make in terms of why we're here is that our participation is directed to a number of issues that can be broken down into a number of phases. Just looking at them very briefly, at a very high level, phase 1 covers the period in late 1999 to 2000. You will hear that from 1997 to 2000 aluminium was Mr Anisimov's main business and the issue is whether Mr Berezovsky acquired an interest in the aluminium assets that eventually found their way into Rusal. As your Ladyship knows, the companies related to Mr Anisimov sold their KrAZ assets and it's not necessary to go into those details.

We will give evidence as to how, from our perception, Mr Abramovich and his companies became involved in aluminium. Mr Anisimov will explain that he did not have any meetings with Mr Berezovsky and he will also explain to your Ladyship that it was never suggested to him that Mr Berezovsky was involved in the purchase or acquired any interest in the KrAZ assets. There are two other witnesses that we will be calling who will be giving evidence to a similar effect: that's Mr Busuk, who at the material time was the CEO of Coalco International and Mr Streshinsky, who at that time was the treasurer of Coalco.

So if that's the first phase, the second phase is the Dorchester meeting in 2000. You will hear from Mr Anisimov that following the sale of his interest in KrAZ assets, he withdrew from the aluminium business. He will tell your Ladyship that he did not know about the Dorchester meeting. I believe no one has suggested he was in fact involved in this meeting. He will also say that he had not even heard about the meeting prior to the commencement of these proceedings.

Now, the Anisimov defendants deny that Mr Berezovsky acquired any interest in Rusal at the Dorchester meeting and clearly this meeting is of critical importance to all the parties before your Ladyship because the foundation of Mr Berezovsky's claim against the Anisimov defendants is the alleged agreement at the Dorchester meeting. If I can just make two points about this meeting by way of overview.

First of all, it confirms the appropriateness of dealing with this by way of a trial in the Commercial Court. At one stage we were faced with having to deal with this meeting in the Chancery Division, where we could give no evidence ourselves about it, but the advantage that your Ladyship has is that all the principal players who were at that meeting who are alive will be giving evidence to your Ladyship.

The second point about the meeting, which is covered in Mr Anisimov's evidence, is that Mr Berezovsky in his evidence suggests that at the time of the sale of the KrAZ assets and the formation of Rusal in early 2000 Mr Anisimov advised Badri, and possibly Mr Berezovsky as well, that all the arrangements between himself -- that is Badri -- Mr Berezovsky and Mr Anisimov should be made in a very precise British law way. Mr Anisimov denies saying this. This dispute is clearly relevant to the question of the governing law and the question of whether there was an English law trust that was created at this meeting.

Now, the third phase is the sale of the first tranche of the Rusal proceeds in 2003. Mr Anisimov was not involved in that. However, it is important to him because, as we understand the position, Mr Berezovsky's primary case in the Abramovich action is that his alleged interest in Rusal was sold in the first Rusal sale and yet in the Metalloinvest action, however, Mr Berezovsky seeks to trace the proceeds of the second Rusal sale.

Now, we contend that the two claims must be advanced in the alternative and therefore if Mr Berezovsky succeeds on his primary case against Mr Abramovich, he will then have no claim against the Anisimov defendants

at all.

The final phase is the second tranche --

MRS JUSTICE GLOSTER: I would just like to be clear where you're positioned. Are you supporting Mr Berezovsky's primary case against Mr Abramovich? I would just like to be clear where you're coming from.

MR MALEK: We say that Mr Berezovsky never did acquire any interest in Rusal. That's our case and has always been our case.

MRS JUSTICE GLOSTER: So you're not, as it were, standing in the same corner as Mr Berezovsky in relation to that.

MR MALEK: No. We're just putting the point that there's an alternative case and that it has an impact on us when it comes to the question of what the sale of the first tranche of the Rusal proceeds involved.

Now, as far as the last phase that I'm going to deal with, the second tranche in 2004, the Metalloinvest action concerns that second tranche. Mr Berezovsky claims that the second tranche encompassed his and Badri's shares in Rusal and he seeks to trace some of those share proceeds into the hands of the Anisimov defendants. Those claims are not the subject of this action and are to be determined in the conjoined Chancery actions.

We've set out an analysis of the Metalloinvest

action in section C of our skeleton simply so that the court is aware of what will be determined there. There are a number of rival cases about what this second tranche is all about; I'm not going to go into the case of Mr Berezovsky or Mr Abramovich because they've already done that.

Our case, by way of a short summary, is this. Mr Anisimov was involved in 2004, during the second Rusal sale, at the request of Badri, who Mr Anisimov was friends with. During the sale Mr Deripaska asked Mr Anisimov whether Mr Berezovsky had any connection to the transaction. Mr Anisimov confirmed the position with Badri, who assured him that Mr Berezovsky was not anywhere near the deal. Badri similarly confirmed to Mr Streshinsky both verbally and in writing that he was the sole beneficial owner of the 25 per cent that was being sold and the final transaction documents clearly recorded that position and that was the basis on which the deal was done.

Now, it's not the case that Mr Berezovsky was somehow whitewashed out of the picture, as my learned friend Mr Rabinowitz characterised the position yesterday. There was an issue in the early part of the discussions relating to the transaction as to whether there was a second beneficiary and whether that

beneficiary was Mr Berezovsky, but it was confirmed that he was not and that's reflected in the documentation. This is not a whitewash; the evidence of those involved in the negotiations and the transaction documents confirm that Mr Berezovsky was not a beneficiary.

Although the second tranche materials are extensive and they're covered in detail in the H(A)bundles, the focus of your Ladyship's investigation, we submit, at this trial is on whether those materials shed light on whether Mr Berezovsky had an interest in the Rusal proceeds. Other issues about the proceeds simply do not arise.

The last point on why we are here relates to Sibneft. The Anisimov defendants have no direct interest in the Sibneft issues but what makes our participation in this trial difficult to plan is that there is no clear line between the Sibneft and the Rusal issues and, as my learned friend Mr Sumption said this afternoon, there is no self-contained compartment and it's fuzzy.

There are a number of witnesses who cover both issues. There are crossovers: for example, one of the issues is how Mr Berezovsky acquired his alleged interest in the aluminium assets; one version of his case is that's from the profits in Sibneft. The context

of Sibneft is relevant to Rusal: for example, the alleged three-way joint venture and the allegations involving Sibneft form part of the context of the Dorchester agreement --

MRS JUSTICE GLOSTER: You're saying you need to be here all the time?

MR MALEK: Not all the time. I was going to come to our participation later. But the last point is one of credibility.

That really leads on to the second topic I wish to address your Ladyship on, which is: how do we see our participation?

The court has already made an order that we participate fully on the overlap issues and that's part 5 of the order of 16 August.

MRS JUSTICE GLOSTER: I think it's liberty to -- I mean, you don't have to participate.

MR MALEK: No, agreed. That we may participate is more accurate, yes. This issue it was touched upon in the judgment, where it said that proper trial management of that action will prevent the defendants from straying beyond the bounds of what is necessary in order to allow that participation. What I was going to do now is just to identify three points how we meet that objective.

The first is that we are only concerned with overlap

issues; we have nothing to say on non-overlap issues. If it arises at all, it's a matter for the court to decide how far cross-examination is appropriate on non-overlap issues. Clearly, findings of the court on non-overlap issues are not binding in the subsequent trial in the Chancery Division. But, as I say, we have no intention of going into the non-overlap issues.

The second point is that there is a common cause between Mr Abramovich and the Anisimov defendants in the sense that we have the same starting point, namely that Mr Berezovsky did not acquire an interest in the Rusal proceeds. As our opening submissions show, this means that we ought to be able to adopt many of the submissions made by Mr Abramovich, who is clearly the lead defendant; and going forward it also means that our cross-examination will not repeat areas already cross-examined in cross-examination by Mr Sumption's team.

We have adduced three factual witnesses. We've adduced no expert evidence. The factual evidence is, as I indicated earlier, Mr Anisimov, Mr Streshinsky and Mr Busuk and that's in file F1.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: The last point which is touched upon by your Ladyship, which is: how do we see our presence going

through the trial?

It's possible that the presence of our full legal team is not required for all the trial and what we were going to do was simply see how matters develop. Clearly there are some areas where we have nothing to say: for example, what happened in December 2000 and whether there were meetings in Cap d'Antibes, we've got nothing to say on that. If at any time during the trial there's a vacant seat here it's no disrespect to your Ladyship and I'm not going to say anything in advance if I'm not going to be here.

Just three other points to make by way of housekeeping relevant to my clients but I would submit to all the parties in this case, which is a point that I touched upon with your Ladyship at an earlier hearing: it concerns a duty on our part to put all points to witnesses.

In my respectful submission in a case of this complexity, with this many documents, it would be impossible to put all the points that are in dispute. What I would suggest is that the appropriate way forward is that there is no duty as such to put points other than in relation to allegations of dishonesty, where it's only fair that the allegation of dishonesty should be put so that that witness answers it.

Subject to that, I would suggest that we proceed on the basis that there is no duty to put and it's a matter of discretion for the individual advocates as to what matters they cover in cross-examination, particularly having regard to the weight of the material in this case.

MRS JUSTICE GLOSTER: Yes. But if at the end of the day I were to consider something to be important and you hadn't put it, then obviously you have to bear the consequences.

MR MALEK: Exactly. We're happy with that approach.

The only other point I make is concerning seating. Your Ladyship dealt with this. We're very happy where we are at the moment. My learned friend Mr Rabinowitz says he has no objection if we stay here throughout the trial.

MRS JUSTICE GLOSTER: You sort it out with each other. If Mr Rabinowitz's team is happy that you stay there, that's fine by me.

MR RABINOWITZ: So far so good, my Lady.

MRS JUSTICE GLOSTER: Right. If there gets to be any difficulty, no doubt you'll raise it with me.

MR MALEK: That's all I was going to say, your Ladyship.

MRS JUSTICE GLOSTER: Thank you very much indeed. Thank you to your team for your written submissions as well.

Mr Adkin, you're going next, are you?

Opening submissions by MR ADKIN

MR ADKIN: My Lady, yes, that's the batting order that we were proposing, with your Ladyship's leave, to adopt throughout the rest of trial.

My Lady, the first thing to say is that I don't propose to repeat what Mr Sumption or Mr Malek have said, either now or at any point during the remainder of this trial. Your Ladyship is not going to be assisted by hearing submissions in duplicate or triplicate.

What I do need to do is briefly explain the family defendants' position, where they fit in, and also briefly to deal with the attack that was made upon them both in the written and oral submissions produced on behalf of Mr Berezovsky.

MRS JUSTICE GLOSTER: You're also going to have to deal with your application to adduce your expert evidence --

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: -- but I don't propose to deal with that at the present time.

MR ADKIN: I was going to mention that briefly at the end because in a sense that is now water under the bridge because the case, as we understand it, is now being amended to introduce a resulting and constructive trust claim and that may well have --

MRS JUSTICE GLOSTER: That's opposed.

MR ADKIN: As we understand it, it isn't anymore. I surmise that's what Mr Sumption was going to come on to at the end of his opening.

MRS JUSTICE GLOSTER: Okay. I don't want to deal with any application to adduce expert evidence until further down the track.

MR ADKIN: My Lady, I am grateful.

What I therefore propose to deal with is four things: firstly, where the family defendants fit into the picture; secondly, where the overlap issues fit into the picture; thirdly, to summarise the family defendants' position on those issues and deal with the criticisms made of that position on Mr Berezovsky's behalf; and finally to summarise how we propose, with your Ladyship's leave, to participate in the trial, to deal with some of the practical points that Mr Malek has raised.

As your Ladyship is aware, the family defendants comprise Badri's widow, daughters and mother, Badri having died in February 2008. That death was, as your Ladyship will have seen, sudden and unexpected. There was no time for the extensive and complex commercial affairs to be put in order before it happened and it's fair to say that Badri's family have, since his death,

had to live with the consequences of that.

One or more of the family defendants is a defendant in all three of the actions presently progressing in the Chancery Division and they comprise the principal beneficiaries of Badri's estate. Although that estate is formally represented in England by court-appointed interim administrators, who are the first named defendants in each of those three Chancery actions, it has been sensible and convenient for the principal beneficiaries of the estate to make the running in defending Mr Berezovsky's claims against it and with the approval of the interim administrators and the other beneficiaries, that is what the family defendants have done.

MRS JUSTICE GLOSTER: So the administrators are Hine and Gibson, are they?

MR ADKIN: My Lady, yes. The family defendants are here because the determination of the overlap issues identified by your Ladyship and Mr Justice Mann and which arise both in the Chancery actions and the Commercial action have very significant consequences for Badri's estate and therefore for the family as beneficiaries of that estate.

But at the end of the day this is by no means, as your Ladyship will appreciate, the main battle between

the family defendants and Mr Berezovsky, which will take place in due course next year. This is an opening skirmish, albeit a very significant one, and the criticisms that have been made of the family in not putting forward their evidence et cetera at this stage need to be seen in that context.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: My Lady, the overlap issues. Although the divide is not a perfect one, Mr Berezovsky's claim against Mr Abramovich has conveniently been broken down into the two parts of Sibneft and Rusal. As your Ladyship is aware, the overlap issues are all matters which relate to the Rusal part of Mr Berezovsky's claim against Mr Abramovich. To the extent therefore that there is a reasonably clear dividing line between the areas in which the family defendants' interest in this trial is and is not engaged, that is where the line is to be drawn.

The reason why the family defendants are here at all is because of the overlap issues and their relevance to the Chancery actions. It's right that I briefly explain how they are relevant. They are relevant to two. The first is the Metalloinvest action, by which Mr Berezovsky claims a 5 per cent share in Metalloinvest, a valuable Russian ore and mining company

which is owned, at least in part, the share of which is owned by entities controlled by Mr Anisimov.

Mr Berezovsky asserts that claim to that stake on three alternative bases. Firstly, he relies on what your Ladyship will have heard referred to before as the bilateral joint venture; that is to say the joint venture agreement said to have been made between Mr Berezovsky and Badri in 1995. Second, he says that he, Badri, and Mr Anisimov made a contract at some stage in 2004 under which that stake was acquired. And third, most relevantly for present purposes, Mr Berezovsky says that the stake was purchased using the proceeds of sale of the Rusal shares sold in July 2004, in which he says he had an interest for reasons with which your Ladyship is familiar, pursuant to the meeting at the Dorchester Hotel. He therefore claims an ability to trace from the Dorchester agreement through the Rusal proceeds and into the Metalloinvest stake.

The overlap issues are therefore of importance in the Metalloinvest action in at least two ways: firstly because the alleged Dorchester Hotel agreement forms the foundation of Mr Berezovsky's claim to have acquired an interest in the proceeds of sale of the Rusal shares and it is those proceeds which were used to fund, it is said, the Metalloinvest stake; and secondly because the

findings on the overlap issues will form the factual backdrop against which another of the foundations of Mr Berezovsky's claims, namely his alleged agreement in 2004, will fall to be judged. It will obviously be considerably more difficult for Mr Berezovsky to make out such an agreement if, on the determination of the overlap issues, the court finds that he's unable to make out any interest in Rusal and its proceeds which lay at its heart.

That then is the Metalloinvest action. The other action to which the overlap issues are relevant is the main Chancery action, in which the family defendants are also participating. By that action Mr Berezovsky asserts --

MRS JUSTICE GLOSTER: You have set this out in your skeleton --

MR ADKIN: My Lady, yes. I will be --

MRS JUSTICE GLOSTER: -- which I've read.

MR ADKIN: Your Ladyship will therefore know that at the heart of that action is the bilateral joint venture but Mr Berezovsky does rely on what he says are a number of self-standing agreements, including the one made, he says, at the Dorchester Hotel in March 2000. On the basis of that he says he acquired an interest not only in the Metalloinvest stake but also in a number of other

very valuable and significant assets.

The determination of the overlap issues is therefore important in both of those actions and it's important to the family defendants for at least two reasons in both of those actions: firstly because he claims an interest in assets which are prima facie held for them; and secondly because in both of them he seeks to blame Badri for having failed properly to secure and record his interest in those assets, which he says was purchased with the proceeds of the second Rusal sale.

That claim might be thought to be a somewhat striking one in light of the position adopted by Mr Berezovsky in this trial as to his approach to the documenting of his interests in assets, but given that Mr Berezovsky estimates the value of the Metalloinvest stake alone to be over $1.4 billion, it is a very significant claim indeed against the estate.

Your Ladyship has seen what the various parties have to say about each of the overlap issues and that is set out in full both in my skeleton and also in Mr Malek's skeleton and I don't propose to repeat that. Your Ladyship will also be aware, having read the skeleton arguments produced in relation to the amendments, that those overlap issues may need to be revisited in light of what is sought to be introduced by way of a resulting

constructive trust claim and it's hoped that that can be done overnight and an agreed position presented to your Ladyship in due course.

Your Ladyship is also aware that the family defendants are not giving evidence in relation to the overlap issues themselves and although the point has nowhere been trailed in his evidence, Mr Berezovsky has made submissions both in writing and orally to the effect that the family defendants are to be criticised for not adducing evidence. Indeed it's said that the family defendants' approach to all of this is some sort of strange game that in some way has been procured by bribery by Mr Abramovich.

MRS JUSTICE GLOSTER: He says you've changed your tune.

MR ADKIN: He says we've changed our tune. He says that our case has been through a number of convulsions.

MRS JUSTICE GLOSTER: And that the court can draw the inference that you've been bought off.

MR ADKIN: That is the submission that was made. It is a serious submission and it is a submission with which I need to deal. It is, however, a submission that I need to put in its proper context.

It's far from clear what, if anything, at this trial will turn on the credibility of the family defendants. To put it at its highest, the attacks made on the family

defendants -- none of which we accept -- are peripheral in my submission to the matters with which your Ladyship is going to have to deal at this trial. But nonetheless I do deal with them because the inference is sought to be drawn that somehow the family defendants are not giving evidence for an improper reason and if they were to give evidence, it would be helpful to Mr Berezovsky. In my submission that's really the only relevant argument that's made.

We say that that is not a proper inference that the court can draw. Before dealing with the bases upon which that submission has been advanced on Mr Berezovsky's behalf, three important points need, we say, to be made.

MRS JUSTICE GLOSTER: I think this point as to whether or not I should draw such an inference is something that I can only really deal with after I've heard the evidence. I think otherwise I'm just dealing with it in a vacuum.

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: At the present time.

MR ADKIN: I'm happy not to address your Ladyship on it at all if your Ladyship is --

MRS JUSTICE GLOSTER: I may want to hear you on it but I'm not sure that opening is the correct time.

MR ADKIN: No. I raise it simply because it was raised by my learned friend both in the annex to his skeleton and also at some length in his opening.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: I certainly don't want it to be said that it's a point that we either accept or ignore.

MRS JUSTICE GLOSTER: No, I am expecting to hear you on it in due course but I would have thought at the end of the evidence was a more appropriate time.

MR ADKIN: My Lady, that is a course with which I'm entirely content to comply.

My Lady, that just leaves the practicalities of our participation in all of this.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Three things. First, the running order.

It is of course a matter for your Ladyship but the order we have adopted now is the order that we propose to adopt in relation both to submissions and to cross-examination, save for the experts, because I have expert witnesses -- subject of course to the arguments that have been trailed -- and Mr Malek doesn't. So we were proposing that I would go first in relation to the experts but in relation to everything else he would.

A second point of practicality on cross-examination, two things on that. Mr Malek has already made the point

about putting matters to witnesses. There's a further two points as well.

The first is that of course there are three of us going to be cross-examining and I hadn't proposed, unless your Ladyship thought that I should, to simply put points to witnesses that have already been put by those cross-examining them. One wouldn't want it said against one that one was deprived of making submissions on those points because one hadn't put them but I wasn't proposing simply to repeat cross-examination that had already been done.

MRS JUSTICE GLOSTER: No, that would be unnecessary, but you may need to make it clear whether or not you're adopting a particular line of cross-examination.

MR ADKIN: My Lady, yes.

The second point of practicality on cross-examination is that there's a great deal of material in the evidence and the witness statements with which we disagree but which is not relevant to the overlap issues and on which I didn't propose to cross-examine at all.

MRS JUSTICE GLOSTER: That's a matter for your discretion.

MR ADKIN: My Lady, I'm grateful.

The third point is experts, but your Ladyship has indicated that that's best dealt with at another time,

certainly after the --

MRS JUSTICE GLOSTER: If we're going to have a battle about whether or not your expert evidence should be permitted to be adduced, then that's something I'd like to deal with in the context of the debate about where the expert evidence is going anyway and I think the stage has not yet been reached for that.

MR ADKIN: My Lady, I'm grateful for that. It's certainly something that's going to be better addressed after we know what the scope of the issues themselves are.

The final point that I've been asked to make relates to the various suggestions that have been made in relation to Badri and his role in the acquisition of the aluminium assets. There have been suggestions in the documents -- though nobody appears to be saying this is their case -- that Badri adopted some sort of violent or gangster-like approach. What my clients have asked me to make absolutely clear is that that's not something that they accept for a moment. Since it's not a matter that your Ladyship is being asked to determine, we can leave it there.

My Lady, unless I can assist you further.

MRS JUSTICE GLOSTER: Thank you very much indeed and thank you and your team for your helpful written submissions.

Yes, Mr Mumford.

Opening submissions by MR MUMFORD

MR MUMFORD: My Lady, I'm grateful. As your Ladyship appreciates, I appear for the Salford defendants, who are the principal defendants to the third of the three Chancery actions.

Your Ladyship will have seen from my opening skeleton argument that the Salford defendants are neutral on the overlap issues which fall for determination in this trial and likewise on those other issues which we are to be bound by, those which are identified at paragraph 5 of the order made at the CMC last summer. Given that we are neutral, we propose to call no evidence on those issues and we certainly reject any criticism that others may seek to draw against us on the basis of our failure to do so.

In light of our neutrality we propose to take a very, very limited part in this trial, it will come as no surprise. We would like, my Lady, to be present to hear some of the witness evidence, in particular that which is to be called by Mr Berezovsky. It is extremely unlikely that we will be cross-examining any of those witnesses and it's even more unlikely that we will choose to be here at all for the witnesses who are to be called by the defendant or indeed for the expert evidence.

I suspect, my Lady, we will then seek to reappear at closing but only with a view to assisting the court with anything that may have arisen out of the evidence which impacts upon my clients and the action that's coming on for trial against them next year.

MRS JUSTICE GLOSTER: Mr Mumford, you come and go as you please.

MR MUMFORD: My Lady, I'm very grateful for that.

MRS JUSTICE GLOSTER: Thank you very much indeed.

Discussion re housekeeping

MRS JUSTICE GLOSTER: So far as the seating arrangements are concerned, Mr Sumption, are you going to be able to cope with the family defendants' representation where they're sitting at the moment or are they to be banished to the back row? Or do you want to wait and see how it goes?

MR SUMPTION: My Lady, I was hoping to be able to invade some of the space to our right, and I thought that that had been understood, once we start on actual evidence. There are members of my team I would welcome coming up front.

MRS JUSTICE GLOSTER: Yes. I think that was my original indication. Right.

Mr Adkin, I think that means your team going back until you're actually doing some cross-examination. Thank you.

Mr Rabinowitz, what's on the agenda?

MR RABINOWITZ: My Lady, there are a few housekeeping matters, if I may call them that. Can I just identify what I think they are. There are probably more than I know about but if I can just identify them and then my learned friends will add to that.

I suppose the first point is: when do we resume with the evidence, when do we start with the evidence? That may depend --

MRS JUSTICE GLOSTER: You tell me what's left on the agenda.

MR RABINOWITZ: Indeed.

Your Ladyship has asked for a list of issues: that is being worked upon and I think the hope is that it will be sorted out by tomorrow. So too with the chronology, which, as I understand it, is in the process of being agreed or attempted to be agreed.

There is the amendment application, which Mr Gillis will deal with. It appears that the differences between the parties on that have narrowed.

There is also --

MRS JUSTICE GLOSTER: Narrowed in the sense that some of it -- perhaps I can hear from Mr Gillis on that.

MR RABINOWITZ: Can I just finish? I'll just identify what they are. I think it may be even better than that so far as your Ladyship is concerned.

I want to say something about cross-examination, the problem of friendly cross-examination. I've spoken to Mr Malek about it because whilst I have no difficulty at all with whoever is represented cross-examining my witnesses, there is always a problem of friendly cross-examination of other witnesses. I don't suppose my learned friends will indulge in it but I do want to put down a marker --

MRS JUSTICE GLOSTER: It never carries much weight.

MR RABINOWITZ: It doesn't, but it would be better if a marker was put down so that people know not to try and indulge in it. But I say that; I'm not sure I need to say any more about it.

MRS JUSTICE GLOSTER: It slightly depends on the particular witness, doesn't it?

MR RABINOWITZ: It does, and that's why one can't say in advance, "You can't cross-examine this person". But I think people need to be aware that it's not going to go down well.

Indeed, as Mr Gillis reminds me, the Chancery defendants really need to cross-examine, if they are going to cross-examine, before we re-examine. I don't think -- Mr Malek certainly agrees with that; I haven't had an opportunity to speak to the other --

MRS JUSTICE GLOSTER: You sort it out between you as to how

it's to go and if there's any dispute.

MR RABINOWITZ: All right. We will do that.

MRS JUSTICE GLOSTER: You're saying that they should cross-examine Mr Sumption's witnesses before you do, are you?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: If you don't agree, I will rule on that.

MR RABINOWITZ: All right, thank you.

There is also, as I understand it, a brewing issue about translators. Can I just identify what it is. It was hoped that this wouldn't be an issue but it appears that it might be.

Mr Berezovsky, as your Ladyship knows, English is not his first language but he has agreed that he will be giving evidence in English. In order to facilitate that, he has asked that he should have one of the translators sitting with him. Mr Berezovsky has a great deal of experience of translators and as a result of this experience the translator he feels comfortable with -- and it is in relation to words that he's having difficulty with; he's not going to sit there and have everything translated for him but there will be occasional difficulties where he simply doesn't understand the English expression -- is a Mr Victor

Prokofiev.

Now, Mr Prokofiev is one of the translators that we have identified --

MRS JUSTICE GLOSTER: Sorry, one of the translators?

MR RABINOWITZ: Mr Prokofiev is also being used, as I understand it, for the purposes of the simultaneous translation, which is being produced for, as I understand it, primarily Mr Abramovich's benefit. One understands that and if Mr Abramovich wants a translation of someone else's evidence while it is being given, that is all fine.

The difficulty about this situation is this: we are told by Skaddens that they have a problem with simultaneous translation whilst Mr Berezovsky is giving evidence unless they can use Mr Prokofiev for this. Now --

MR SUMPTION: That's not our position at all.

MR RABINOWITZ: That's what I've been led to believe.

MRS JUSTICE GLOSTER: Can you try and sort this out?

MR SUMPTION: My Lady, can I try to summarise this quite shortly. I'm afraid we haven't been able to sort it out. Basically the position is Mr Berezovsky wants to have sitting beside him not just any old translator but a particular translator and only one. The problem about that is that when we have, for example -- as we will

next week -- only two simultaneous translators, it means --

MRS JUSTICE GLOSTER: How many do have we got at the moment?

MR SUMPTION: We've got three at the moment; we will sometimes be having four. But really skilled Russian simultaneous translators are not very thick on the ground.

The problem is that if, for example, we have only two -- and it's also a problem if there are three -- what will happen is that one of them is permanently engaged sitting next to Berezovsky: that means we've only got one of them sitting in the box and basically you can only do about three-quarters of an hour or an hour at the most of this job before you need a rest of at least similar length; much more than just a ten-minute break.

This is normally dealt with, if you've got two people in the box, they take one hour on, one hour off, and there's continuous simultaneous translation. But Mr Berezovsky says: no, I wanted to have Mr Prokofiev and no one else sitting beside me the whole time, even if that means there's only one translator left to sit in the box and that translator has to take an hour off every hour. That, in our submission, is an absolutely ridiculous proposition.

We are perfectly happy that one of the translators, even if there are only two, should be sitting next to Mr Berezovsky. We say that the efficient way of dealing with this is that -- and we've discussed this with the translators, who are apparently agreeable to it -- a translator, not necessarily Mr Prokofiev, should sit beside Mr Berezovsky at any one time.

MRS JUSTICE GLOSTER: During his or her hour off?

MR SUMPTION: Exactly. They are apparently perfectly agreeable to the idea that when the translator in the box needs a rest they will swap round and the one who has just been translating for an hour will then sit and assist Mr Berezovsky as necessary because it's actually very unlikely that all that much assistance will be required. They can swap round, for instance, during the stenographer breaks.

That means that there's somebody available to translate in the box at all times and somebody available to sit by Mr Berezovsky at all times. The only need that will not be satisfied is Mr Berezovsky's insistence that it should be the same person all the time, which is completely impractical. That is the issue, as I understand it, that has arisen.

Mr Abramovich is obviously at the receiving end of a $7 billion claim and he is entitled to have

a translation of what is going on, about which he is going to have to answer and deal with in due course in his own evidence.

Mr Berezovsky, by comparison, is pretty proficient in English. Your Ladyship might find it useful to know that in the North Shore litigation in the Chancery Division, Mr Berezovsky was cross-examined by Mr Swainston for an entire day. In the course of that day, those on behalf of my solicitors who were attending tell me that he needed assistance with particular words two or three times in the course of the entire day but was basically perfectly capable of fielding the questions as recorded on the transcript.

Now, in our submission a witness cannot simply demand the services of translators who are there for the assistance of the court translation rather than for their personal assistance or on any terms, however unreasonable, and Mr Berezovsky should put up with having to have a translator occasionally who is not Mr Prokofiev, bearing in mind that all four of the translators who are at the service of the court are absolutely outstandingly skillful, as one can see from the way in which, without interruption of the proceedings or any pause or difficulty, they have continuously served the court very well in the short

time that we've been hearing this matter.

MRS JUSTICE GLOSTER: Do you want to --

MR RABINOWITZ: I am grateful to Mr Sumption. That was exactly the issue I was going to identify but perhaps in different language to Mr Sumption, but he decided he wanted to present it. Can I just put it slightly differently.

Mr Sumption says it's impracticable for Mr Berezovsky, who is not an English speaker -- he can speak English and unlike Mr Abramovich, who has a problem, he is going to do his best. He wants a translator. He is comfortable, as a result of his experience, with Mr Prokofiev.

If it really was impracticable, then one could understand a basis of what Mr Sumption is saying. Mr Sumption talks about three or four translators being involved in simultaneous translation --

MR SUMPTION: There's only two next week.

MR RABINOWITZ: Well, then Mr Sumption can get a third.

MR SUMPTION: No, he can't.

MR RABINOWITZ: Well, they can make efforts to do that.

MRS JUSTICE GLOSTER: Can you not, please, row between each other. Can you please address your submissions to the court.

MR RABINOWITZ: It's difficult to believe that -- let me

take a step back.

Mr Abramovich wants simultaneous translations because he wants to listen to what Mr Berezovsky is saying and that's fair enough. Mr Sumption says it's a $7 billion claim, Mr Abramovich should be able to hear what's being said, and one understands that. Equally, Mr Berezovsky will be the witness on this particular occasion.

Insofar as one has to balance Mr Berezovsky's interests in ensuring that he understands the questions that are being put and that he gives as clear an answer as possible with Mr Abramovich's position, who wants to hear what is being said, in my respectful submission the balance undoubtedly comes down in favour of Mr Berezovsky in a sense being indulged with what he needs in order to give evidence as accurately as he would wish.

Now, we are told that they can only get two translators; in my respectful submission that is extremely unlikely to be the case. There must be other translators who can assist us. Insofar as they haven't made efforts to find another, then in my respectful submission they should. But insofar as one has to try and balance the interests, in my respectful submission the balance of the interests, as I've just said,

undoubtedly favours Mr Berezovsky being very comfortable with the translator that he has with him.

Can I just make another point about the evidence. Mr Berezovsky can speak English; he doesn't always find it easy. He also finds it a lot easier to follow written English than the intonations of spoken English. One of the other things -- I haven't yet had a chance to raise this with my learned friend but since we're talking about the giving of evidence and how it might be given -- what Mr Berezovsky has asked is whether he could have the LiveNote in front of him, just so he can read the question as well. It's just that he will find it easier to see what is being asked.

MRS JUSTICE GLOSTER: I think that's something you need to discuss with counsel on the other side. I personally don't have any problem with that. I've had experience actually in a criminal trial where it was extremely helpful for the witness also to have the LiveNote transcript because otherwise we're all operating under the advantage or having the benefit of having the questions there in front of us.

Sometimes there's a question as to whether that enables the witness, as it were, to check up on what he's been asked previously or check up on his answers; sometimes there's an objection to that. But speaking

for myself, I wouldn't have a problem with it.

Mr Sumption, what's your --

MR SUMPTION: I have no problem at all about that.

MRS JUSTICE GLOSTER: Right. Mr Malek?

MR MALEK: No problem.

MR ADKIN: No problem.

MRS JUSTICE GLOSTER: So the answer is: so far as LiveNote is concerned, no problem.

Is there anything else you want to say about the translator issue?

MR RABINOWITZ: No, I don't think there is anything else I can say.

MRS JUSTICE GLOSTER: So far as the translator is concerned, it's obviously important that Mr Berezovsky should have the assistance of a highly competent and professional translator if he needs it. However, I think it's unsatisfactory for any witness or any party in a case, as it were, to be in a position to choose a translator with whom he or she may be comfortable. Accordingly I do not accede to Mr Rabinowitz's application that Mr Berezovsky should able to choose the translator of his choice.

What else is on the agenda?

MR GILLIS: My Lady, could I just explain about amendments and business for tomorrow.

MRS JUSTICE GLOSTER: Yes, sure.

MR GILLIS: The main matter before your Ladyship tomorrow was going to be Mr Berezovsky's application to amend C64, subsections 2 and 3, which was the application to introduce claims under --

MRS JUSTICE GLOSTER: I've read it.

MR GILLIS: I'm glad to say that that issue has now been resolved and Mr Abramovich has consented to the amendments to C64(2) and (3) being made.

MRS JUSTICE GLOSTER: Hang on, let me just -- I'm looking at your skeleton. C63 is agreed?

MR GILLIS: C64(2) and (3).

MRS JUSTICE GLOSTER: C64(2) and (3)?

MR GILLIS: Yes. So those were the pleas of resulting trust and constructive trust.

MRS JUSTICE GLOSTER: Which you say are kind of remedial consequences?

MR GILLIS: Indeed so. The objection that was being made was those claims were time-barred or they did not arise out of the same or substantially the same effects. We said: not so, it falls within section 21.1(b) of the Limitation Act. Your Ladyship is going to be deprived of the delights of all of those arguments --

MRS JUSTICE GLOSTER: That's a pity.

MR GILLIS: I'm sure that's exactly what your Ladyship

thinks -- because it's been accepted that we can have permission to make those amendments and also a very minor consequential amendment to C59B. I don't think I need trouble your Ladyship with that at the moment because we'll be putting in a draft order.

For his part, Mr Berezovsky has consented to Mr Abramovich's amendment to D63, which was the amendment to plead that the express trust claim was invalid because the trust would not be validly constituted.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So, my Lady, on that basis, all the amendment issues between the parties in the Abramovich action have been resolved.

MRS JUSTICE GLOSTER: Even C64(1)?

MR GILLIS: My Lady, yes.

MRS JUSTICE GLOSTER: Right. So all three subparagraphs of that have gone?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: Your Ladyship will see from the order when it's produced that those amendments are being consented to on terms that if there are subsequent tracing issues which arise, they will be dealt with at a subsequent hearing.

MRS JUSTICE GLOSTER: Yes. That's the order I've already

made.

MR GILLIS: That's the order that has already been made in respect of various defence points that were being raised by Mr Abramovich in relation to their tax arguments and the requirement for permits to pay money out of the country. The same solution is being adopted if tracing claims arise in relation to --

MRS JUSTICE GLOSTER: Any of these new claims?

MR GILLIS: -- any of these new claims.

MRS JUSTICE GLOSTER: Yes, I see. Well, you'll let me have an order for me to sign on.

MR GILLIS: Indeed so.

My Lady, potentially these amendments have an impact on the position of the Chancery defendants but none of them are opposing in principle the amendments that are being made.

MRS JUSTICE GLOSTER: They just want the overlap issues redefined?

MR GILLIS: Exactly. They just want to make sure that the overlap issues are sufficiently clearly defined so that all parties understand the position. So that is in the process of being worked out and we don't anticipate any difficulties in relation to that. So hopefully that can be put before your Ladyship as an agreed position tomorrow morning.

MRS JUSTICE GLOSTER: That's agreed, Ms Davies, is it?

MS DAVIES: My Lady, yes, subject only to this: there was certain further clarification about my learned friend's new case that we sought that he has also indicated to me orally that he's happy to provide. We haven't yet seen the consent order but assuming that we manage to resolve those differences between us then, yes, that's all agreed.

MRS JUSTICE GLOSTER: Ms Tolaney?

MS TOLANEY: My Lady, that's also agreed on the part of the Anisimov defendants. The only concern we had was that the claim was articulated in our action in exactly the same way, so that there was an overlap, and that is in hand.

MRS JUSTICE GLOSTER: Yes, thank you.

Mr Adkin?

MR ADKIN: We have the same position as Ms Tolaney.

MRS JUSTICE GLOSTER: And Mr Mumford?

MR MUMFORD: Subject to the clarification of the overlap issues, we're quite content.

MRS JUSTICE GLOSTER: Yes, okay. I'll leave you, Mr Gillis, to sort out with the others the reformulation of the overlap issues.

MR GILLIS: My Lady, yes. So on that basis I would not suggest that you re-read the skeleton arguments this

evening.

My Lady, the other matter that will be before the court tomorrow is Mr Berezovsky's application under CPR 33.4 --

MRS JUSTICE GLOSTER: For leave to cross-examine.

MR GILLIS: -- for leave to cross-examine the two border guards. In respect of that, your Ladyship has Mr Berezovsky's skeleton argument and Mr Abramovich's skeleton argument and I think that will be the only substantive issue which is live before the court tomorrow.

MRS JUSTICE GLOSTER: So we can start evidence tomorrow?

MR GILLIS: I think that is then an issue which Mr Sumption wishes to raise but I think probably the CPR 33.4 issue is unlikely to take more than an hour. It may be that there are some overlap issues still to clarify, but hopefully not.

MRS JUSTICE GLOSTER: Can I just raise with you, Mr Rabinowitz, first of all the timetable. I didn't know but I realise it's Yom Kippur on Friday; is that right? Is that why we're not sitting in the afternoon?

MR RABINOWITZ: We're not sitting in the afternoon.

MRS JUSTICE GLOSTER: Do you want to start early on Friday morning?

MR RABINOWITZ: Not especially --

MRS JUSTICE GLOSTER: Let me just tell you before -- you're going to, I'm afraid, have to reschedule the 25th and the 26th. I'm sorry about that. I have to sit in the Court of Appeal criminal division and I have to sit those two days. I'm happy to sit earlier or late to try and make up the hours, to make up the lost days on the 25th and the 26th, on other days.

MR RABINOWITZ: Again, my Lady, I'm in your hands. It may be worth hearing from Mr Sumption about his views on the timetable.

MR SUMPTION: My Lady, as to sitting early or late, we would welcome it if your Ladyship would do that, although if we find that we get into difficulties we will obviously have to raise that with your Ladyship.

Can I just deal with the question of when Mr Berezovsky starts his evidence. I have mentioned this to my learned friend, who is neutral and doesn't object. One of the problems, with which your Ladyship has not been troubled, about the preparation of this case is that, for reasons which I'm certainly not criticising anyone for, bundles became available very late, things took a very long time to load up on Magnum, before which they couldn't be given bundle references. There are also documents which we are awaiting from Clydesdale Bank -- we assume we will get those

quickly -- in addition to a process of catching up which I had certainly, for my part, hoped to be able to achieve well before the trial started but haven't been able to do so.

Now, if your Ladyship wants me to start cross-examining Mr Berezovsky tomorrow, I am in the position to do so. I would actually, I have to say, very much prefer it if your Ladyship could start the cross-examination of Mr Berezovsky at the beginning of the proceedings on Thursday, as in fact originally envisaged in the page, so that I can take on board material which has arrived too recently for me to have studied it properly.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz?

MR RABINOWITZ: My Lady, as my learned friend indicated, I am neutral. I do sympathise with his position, there are things that --

MRS JUSTICE GLOSTER: We all know in a long trial if you haven't got the references it's very difficult.

Right. Well, I will then hear the application tomorrow in relation to the cross-examination of the Russian border officials or whoever they are, and that is all I will do unless there are any other housekeeping issues. Then Mr Berezovsky will start his evidence on Thursday, the 6th.

It's up to the parties whether you wish me to sit at the 9.00 or 9.30 on Friday to give us a longer day.

MR RABINOWITZ: **It may be that Mr Sumption at that stage can indicate whether he needs --**

MR SUMPTION: **I would welcome it, but if my learned friend is not --**

MRS JUSTICE GLOSTER: **I feel that if I'm taking out the 25th and the 26th to sit in the Court of Appeal, I will certainly start at 9.00 or 9.15.**

MR SUMPTION: **We are very grateful to your Ladyship for doing that.**

MRS JUSTICE GLOSTER: **Right. I will sit at 9.00, 9.15, which?**

MR SUMPTION: **9 o'clock.**

MRS JUSTICE GLOSTER: **Right. 9 o'clock on the 7th.**

Mr Rabinowitz, what then: and go to 1 o'clock?

MR RABINOWITZ: **My Lady, I would be grateful for that, yes, if we could rise at 1.00.**

MRS JUSTICE GLOSTER: **Right, very well.**

We might as well start at 10.30 tomorrow. There's no reason not to start at 10.30 tomorrow.

(4.10 pm)

(The hearing adjourned until

Wednesday, 5 October 2011 at 10.30 am)

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