Monday, 28 November 2011

(10.15 am)

MR MALEK: My Lady, it's Mr Streshinsky next.

MRS JUSTICE GLOSTER: Yes.

MR VLADIMIR STRESHINSKY (sworn)

MRS JUSTICE GLOSTER: Please sit down, if you would like to.

Examination-in-chief by MR MALEK

MR MALEK: Can you give the court your full name, please?

A. My name is Vladimir Streshinsky, I'm known as Ivan Streshinsky.

Q. As I understand it, you're happy giving evidence in English but you would like to have the ability to use a translator if there's any difficulty, is that correct?

A. Yes.

Q. Could you please be provided with bundle F1, tab 2, opened at page 55 F1/02/55.

Do you have that in front of you?

A. Yes.

Q. Is that the first page of your statement?

A. That's right.

Q. Could you now turn to page 93, which is the last page, and confirm that that is your signature?

A. Yes, that's my signature.

Q. And do you confirm the facts stated in your statement to be true?

A. Yes.

Q. And you confirm that you do not have a mobile phone on you?

A. Yes.

MRS JUSTICE GLOSTER: Right. Who is going first?

Mr Sumption, you're not cross-examining?

MR SUMPTION: I'm not cross-examining or doing anything for the moment.

Cross-examination by MR MASEFIELD

MR MASEFIELD: Good morning, Mr Streshinsky. My name is Mr Masefield and I'm going to be asking you some questions today on behalf of Mr Berezovsky.

I'm not going to be asking you about matters which relate solely to the Metalloinvest action, Mr Streshinsky, for example whether you're aware of an agreement between Mr Anisimov and Mr Patarkatsishvili in the summer of 2004 to split the Rusal proceeds between themselves on a 50/50 basis. And I'm not going to be asking you whether the sale of the KrAZ assets by Mr Anisimov in February 2000 was at a significant undervalue.

Indeed, I'm not going to be asking you any questions about your involvement in the 10 February 2000 sale of the KrAZ assets at all because we've already covered that ground quite extensively with some of the other

witnesses, including Mr Anisimov and Mr Buzuk. What I want mainly to focus on with you is your involvement in the second Rusal sale transaction which took place in the summer of 2004, and in particular I'd like to ask you some questions about the events of June and July of 2004, okay?

Before I do that, I want to ask you a few questions about your personal career and your present relationship with certain people connected to the litigation. Now, you tell us you were introduced to Mr Anisimov and joined his company, Coalco International, in about 1994, is that right?

A. That's right.

Q. And you continued to work for Coalco and Mr Anisimov up until quite recently, until 2009?

A. That's right.

Q. And so you worked for Mr Anisimov and Coalco for a period of about 15 years, didn't you, Mr Streshinsky?

A. That's right.

Q. You say that during your time with Coalco you worked closely with Mr Anisimov and became one of his most senior advisers?

A. That's correct.

Q. You tell us that you developed a good working relationship with Mr Anisimov, that's that, is it?

A. That's right.

Q. You may want to give your answers to her Lady.

Presumably Mr Anisimov came to regard you as someone he could trust, a faithful and loyal employee?

A. That's right.

Q. And although you're no longer employed by Coalco, it's right to say, isn't it, Mr Streshinsky, that you still enjoy a good business relationship with Mr Anisimov?

A. I do not have business relationship with Mr Anisimov.

Q. Well is that right, Mr Streshinsky? You're a director of his two Russian real estate companies, Riniole Investments and Coleridge Trading Ltd?

A. That's not true any longer.

Q. That's not true any longer. When did you cease to be a director?

A. I think I ceased to be a director last year.

Q. Because looking at paragraph 8 of your statement, Mr Streshinsky, you say that at Mr Anisimov's request you were a director of two of his Russian real estate companies F1/02/55.

A. Okay, I'm sorry, I was director of these two companies because these two companies were holding a piece of real estate in the centre of Moscow, so when this piece of real estate was sold, I don't know exactly, I believe maybe in the course of this year, I ceased to be

a director of this these two companies.

Q. And that was earlier this year, was it, Mr Streshinsky?

A. Probably in the summer.

Q. Thank you. And you tell us that in terms of your current business affairs you're the chief executive officer of the Russian telecoms company, OJSC Telecominvest, is that right?

A. That's correct.

Q. Can you confirm that Mr Usmanov has a substantial interest in OJSC Telecominvest?

A. That's correct.

Q. And Mr Usmanov is also Mr Anisimov's partner in Metalloinvest, isn't he, Mr Streshinsky?

A. That's correct.

Q. Mr Usmanov has a 50 per cent stake in Metalloinvest and Mr Anisimov has a 20 per cent stake in Metalloinvest?

A. That's correct.

Q. And indeed, until recently, you served as a director of Metalloinvest, did you not, Mr Streshinsky?

A. I think I served as a director in Metalloinvest maybe up until 2009.

Q. I'm grateful. Would you say that you still enjoy good business relationships with Mr Anisimov and Mr Usmanov, Mr Streshinsky?

A. I enjoy a good business relationship with Mr Usmanov and

I have no business relationship with Mr Anisimov.

Q. What relations do you currently enjoy with Mr Abramovich, Mr Streshinsky?

A. None whatsoever.

Q. You see, one of Mr Abramovich's most senior assistants, Ms Panchenko, has already told the court that she discussed her evidence with you, Mr Streshinsky, in a telephone conversation which took place earlier this year. Is that right, Mr Streshinsky?

A. That's correct. I spoke to Irina Panchenko some time in summer this year.

Q. When in the summer did that conversation take place, Mr Streshinsky?

A. I don't remember exactly, probably June or July.

Q. Do you recall who else participated in that telephone call, Mr Streshinsky?

A. Nobody else.

Q. Just yourself and Ms Panchenko?

A. That's correct.

Q. And who had asked you to participate in that telephone call?

A. She called me.

Q. She called you out of the blue with no warning?

A. Yes.

Q. What was the purpose of the telephone call,

Mr Streshinsky?

A. She wanted to reconcile the events of summer 2004 with me because I believe my evidence has become available in the internet or, you know, in the court filings.

Q. So you discussed your evidence and her evidence on that occasion?

A. I did not read her evidence so I discussed only my recollections of the events.

Q. And were there other occasions, apart from that particular telephone call, where you discussed your evidence with any other witness in this case, Mr Streshinsky?

A. Witnesses? Well, I discussed my evidence with Mr Anisimov, probably last time it was at the beginning of 2010.

Q. And anybody else apart from Mr Anisimov? Have you spoken to Mr De Cort?

A. No, I have not spoken to Mr De Cort.

Q. Have you spoken to Mr Tenenbaum?

A. No.

Q. Mr Hauser?

A. No.

Q. Very well.

I would like to move on, if I may, to the sale of the 25 per cent shares in Rusal which took place in the

summer of 2004. Now, you were involved in that transaction, weren't you, Mr Streshinsky?

A. Yes.

Q. You tell us that in early June 2004, Mr Anisimov instructed you to assist in the structuring and documenting of the sale of a 25 per cent interest in Rusal from Mr Patarkatsishvili to Mr Deripaska, is that correct?

A. Yes, it was either end of May or beginning of June.

Q. You were also told by Mr Anisimov that Salford Capital Partners Inc would be assisting you in preparing the transaction documents?

A. That's correct.

Q. And you therefore made contact with Salford in the first week of June 2004, and in particular you got in touch with Mr Vladimir Ashurov and Ms Ksenia Arbatova?

A. That's right.

Q. You tell us that Mr Ashurov attended a meeting with Mr Deripaska's representatives on Friday 4 June 2004?

A. That's correct.

Q. Following this meeting with Mr Deripaska's representatives, which took place on that Friday, on Wednesday 9 June 2004 you received an email from Mr Mishakov attaching a schematic diagram of the transaction, together with a Bryan Cave memorandum of

the same date which had been prepared by Mr Hauser, do you remember that?

A. Well, it must have been the case, yes.

Q. Please could you be given bundle H(A)74 and we can look at the document at page 218 H(A)74/218. Do you see there a covering email to yourself, Mr Streshinsky?

A. That's right. Yes, I see.

Q. From Mr Mishakov?

A. Yes.

Q. We can see from the attachments that it included Mr Hauser's memorandum of 9 June and Mr Anisimov's schematic diagram also of 9 June, do you see that? We have the attachments on the next few pages, but just looking back at the email, do you see the attachments?

A. Yes.

Q. And if we turn on to page 219 H(A)/74/219, we can see Mr Hauser's memorandum of 9 June 2004, do you have that document?

A. Which page?

Q. 219, you're on the right page.

A. Yes, yes, I'm on that page.

Q. We've looked at this document already with some of the other witnesses, Mr Streshinsky, and I'm not going to take up further time by going through it all with you, but we can see from the memorandum that Mr Hauser talks

in a number of places about ultimate beneficiaries, in the plural, who he refers to as BB.

A. Mm-hm.

Q. We can see that for example in bullet point 1 on page 219, do you see that?

A. Yes.

Q. If we turn over the page, to page 220 H(A)74/220, just below bullet point 6, the italicised portion, there's a reference there again to each of BB, and to include an insurance that:

"... BB were the only persons who have ever been beneficially entitled to the Shares."

Do you see that, Mr Streshinsky?

A. Which point?

Q. It's just below point 6, the italicised passage?

A. It's a release, yes?

Q. Yes. And you see a reference there to:

"... BB were the only persons who have ever been beneficially entitled to the Shares."

A. Yes.

Q. If we turn on in the bundle to page 223 H(A)74/223, we can see Mr Anisimov's schematic diagram which you were also sent. Do you have that? That's the right page, Mr Streshinsky. We can see that Mr Anisimov refers in his diagram to the "Beneficiaries' Company", do you see

that at the top of the page?

A. Yes.

Q. Looking down at the notes, for example note number 6, Mr Mishakov makes reference to the beneficiaries B&B, do you see that?

A. Yes.

Q. So when you received this memorandum, this schematic diagram, Mr Streshinsky, you would have seen that Mr Deripaska's representatives understood that there were two ultimate beneficial owners of the 25 per cent stake in Rusal, correct?

A. Yes, that might be the case that there were two beneficiaries.

Q. And you forwarded this memorandum and the schematic diagram the same day to Yuri Fartashnyak, do you remember that, Mr Streshinsky?

A. I don't remember that but I know the name.

Q. Who was Mr Fartashnyak?

A. He was a consultant lawyer who consulted us on a number of transactions.

Q. He was an internal lawyer or external lawyer?

A. External.

Q. Who was he a lawyer with, which firm?

A. He didn't work in any firm.

Q. He was an independent --

A. Moscow, independent.

Q. If you put away bundle H(A)74 and take up bundle H(A)75, and turn within H(A)75 to page 99T H(A)75/99T, do you see there a page with a string of emails, Mr Streshinsky?

A. Yes.

Q. I'm afraid it's a little bit hard to read the text but bear with me. If you look at the very bottom of the page, it stems -- on page 99T, right at the bottom, about seven lines up from the bottom, we can see an email from Ksenia Arbatova with a subject "Document Diary for Documentary Closing", do you see that?

A. Yes.

Q. I don't think we need to turn that document diary up, Mr Streshinsky. It's at H(A)75/37 and we've looked at it with other witnesses. But you can take it from me that the document diary that Ms Arbatova prepared also made reference to two ultimate beneficiaries who she refers to in that document diary as B1 and B2, do you remember that?

A. Can I see that?

Q. If you want to have a look at it briefly, it's back at page 37 in this bundle H(A)75/37.

A. Page 37?

Q. Correct.

A. This one, yes, the document diary.

Q. Do you have there the document diary?

A. Mm-hm.

Q. We can see, if you look at the column "Parties", there is reference in the second column to various parties who are going to be executing the documents.

If we look down to the third box to item 3, there's going to be a personal guarantee to be executed by B1, and then there's going to be another guarantee to be executed by B2; do you see that, Mr Streshinsky?

A. Yes.

Q. Over the page, in the last box, we can see that it was envisaged by Ms Arbatova that a general power of attorney would be issued by B2 in favour of B1, do you see that?

A. I see that.

MRS JUSTICE GLOSTER: Did you see this document at the time?

A. I don't remember seeing this particular document but I've seen it during the preparation for my witness statement.

MR MASEFIELD: If we turn back to 99T, to the email string, Mr Streshinsky, we can see that Ms Arbatova forwarded the document diary to you, that's the email right at the bottom of page 99T, so it seems that you were sent the document diary on 10 June 2004.

A. Okay. I don't deny it.

Q. If we look at the next email up on page 99T, we can see that there is an email from Mr Mishakov to you of 9 June 2004, attaching the Bryan Cave memorandum and the schematic diagram that we've just looked at, do you see that? It's the one immediately above Ms Arbatova's email on page 99T H(A)75/99T.

A. Mm-hm. Okay.

Q. Then immediately above that we can see that you forwarded those documents to Yuri Fartushnyak at 8.59 pm on Thursday 10 June 2004, and immediately above that forwarding email we have Mr Fartushnyak's response, and we can see that Mr Fartushnyak says he's read through the documents that you've forwarded, and he then goes on to make a number of short points. His third point is this:

"Thirdly, it seemed to me that X and Y must provide a joint and several guarantee on behalf of the seller. But will they be willing to do that?"

Do you see that, Mr Streshinsky?

A. Yes.

Q. So Mr Fartushnyak was clearly under the impression that there were two ultimate beneficiaries, wasn't he?

A. Well, he was based on the documents which he was presented.

Q. Indeed, and those documents refer to X and Y and B&B and B1 and B2?

A. That's correct.

Q. And then Mr Fartushnyak says:

"Finally I recommend consulting with an English lawyer as there might be some 'sticking points' related to this."

Do you see that?

A. Yes, I see that.

Q. We can see that you then forwarded Mr Fartushnyak's recommendation on to Ms Ksenia Arbatova the same day, that's the email at the top of the page?

A. That's correct.

Q. And Ms Arbatova, we know, lost no time in taking up Mr Fartushnyak's advice and instructing an English lawyer. We can see that if we turn on in the bundle to page 228.023 H(A)75/228.023. I'm afraid the numbering is a little complicated.

Do you see there an email starting about halfway down the page from Ms Arbatova to Lynn McCaw of Leboeuf, Lamb, Greene & McRae, dated 11 June 2004?

A. Mm-hm.

Q. And we can see that Ms Arbatova says:

"Following our telephone conference, attached please find the drafts of the transaction documents. I also

attached the transaction description and documents diary for your convenience."

Do you see that, Mr Streshinsky?

A. Yes.

Q. We'll turn to look at Ms Arbatova's transaction description in a moment, Mr Streshinsky, but before we do please can you confirm that you were aware of the fact that Salford had instructed Leboeufs around this time?

A. Yes.

Q. And we know that you were aware of that because you sent an email in Russian to Mr Ashurov on Sunday 13 June in which you approved the instruction of Leboeufs, do you remember that?

A. Yes.

Q. We have Ms Arbatova's transaction description in this bundle at page 228.071 H(A)75/228.071, if we could turn that up. Although this document appears on its face to be dated 28 March 2011, that is in fact due to the automatic date insertion in the document and merely reflects the date when this document was printed, okay?

But it's pretty clear from the email I've taken you to and to Leboeuf's response, which I'm coming on to, that this is the transaction description document which was sent by Ms Arbatova to Leboeufs on 11 June 2004. So

at the time when Ms Arbatova sent this, it was one week after your initial meeting with Mr Deripaska's people on 4 June 2004?

A. It was, what, 11th?

Q. 11 June, and indeed it was the same day as a second meeting that you had with Mr Deripaska's people which also took place on 11 June 2004. Do you remember that second meeting on 11 June?

A. Yes, there was a meeting on 11 June.

Q. Do you recognise this memorandum which Ms Arbatova prepared, Mr Streshinsky?

A. No, I don't think I've seen this memorandum.

Q. You don't think that Salford provided you with a copy of it at the time, even though you were endorsing their instruction of Leboeufs?

A. I don't think I've seen this memorandum.

Q. Can we just look at it very briefly. If we look in particular at the second paragraph of this memorandum, we can see what Ms Arbatova's and Salford's understanding was at the time. Ms Arbatova says this:

"The current situation is as follows: the Shares are held by [Roman Abramovich] who holds them (through the structure where [Roman Abramovich] is a beneficiary or a shareholder of P that owns M which owns the Shares), in favour, under informal agreements and arrangements, of

BB (please see below), who are the final and ultimate beneficial owners of the Shares."

Do you see that, Mr Streshinsky?

A. Yes, I see that.

Q. The reference in parenthesis to "please see below" appears to be a reference to the first numbered paragraph where BB are identified as the ultimate beneficiaries of company B. Do you see that, Mr Streshinsky?

A. Yes.

Q. Now, did this understanding which Salford clearly had of the situation as at 11 June 2004 also reflect your understanding at that date? Did you also understand at 11 June 2004 that the shares were held by Mr Abramovich in favour of BB as a result of informal agreements and arrangements?

A. At that moment I simply had no information about the particulars of the holding of the shares, so I need to turn your attention to the fact that on the -- we had a first, initial meeting on 4 June, that was with Ms Arbatova, possibly Mr Ashurov and Mr Mishakov. On 3 June, there was an article in Moscow newspaper saying that Mr Berezovsky is involved with the Russkiy Aluminium.

So when we came to the meeting on 4 June, we were --

so Mr Mishakov said that, if that is the case, we have to basically use two beneficiaries in these documents. So we were all attempting to meet with Mr Abramovich's party because they were the ones who knew the exact details of how the shares were held.

Q. Mr Streshinsky, we will come on to other documents in a moment which show that your information about Mr Berezovsky and his interest went much further than what was being said in the newspaper articles, but you say you had no information?

A. I had no information about Mr Berezovsky holding the shares of Rusal.

Q. Is that really your evidence to the court, Mr Streshinsky, you had no background information?

A. I had no background information that Mr Berezovsky was the owner of --

Q. We'll come on to those documents in a moment.

MR MALEK: I think it's fair for the witness to be able to finish his answer before another question is asked.

MR MASEFIELD: Sorry, Mr Malek.

MRS JUSTICE GLOSTER: Yes, can you finish your answer, please, Mr Streshinsky.

A. To finish my answer, we were trying to get the information from Mr Abramovich's party, because this was the party who was holding the shares, and they knew the

details of how the shares were held. At that moment in time, I was trying to progress the deal as much as possible, so we were proceeding with the transaction documents without having full details of the ownership.

MR MASEFIELD: You see, Mr Streshinsky, you'd been working on this transaction alongside Salford for over a week by this point, hadn't you?

A. Yes.

Q. You'd also been liaising with Mr Deripaska's representatives, you'd met them twice?

A. Yes, I met Mr Mishakov.

Q. And Salford's understanding, as we see reflected in this memorandum, was that Mr Abramovich was holding shares for and on behalf of BB. We see that in the second paragraph, don't we?

A. That's right.

Q. And the understanding of Mr Deripaska's representatives, Mr Hauser and Mr Mishakov, was also that Mr Abramovich was holding the shares for and on behalf of BB, or B&B?

A. That's correct at that point in time, yes.

Q. Was that not also your understanding at this time, Mr Streshinsky, that Mr Abramovich was holding the shares for and on behalf of BB?

A. I have no -- I didn't have any specific knowledge of that but I could assume that.

Q. We don't see you writing to Mr Deripaska's representatives or to Salford correcting their understanding that there are two beneficiaries?

A. Yes, because I didn't know. I --

Q. We don't see you writing back to Mr Fartushnyak following the receipt of the email we've just looked at, telling him that he's got it wrong and there are not in fact two beneficiaries, X and Y?

A. Yes, I didn't know at that point in time.

Q. Well, let's have a look at a few more documents, Mr Streshinsky.

Now do you recall that Ms Arbatova's email of 11 June 2004, which attached this transaction description document, also referred to a telephone conference which Ms Arbatova had had with Ms Lynn McCaw of Leboeufs?

A. No, I don't recall.

Q. If we go back to the document, it's page 228.023 H(A)75/228.023.

Do you see the email starts halfway down the page: "Following our teleconference ..."

We can see what Ms Arbatova had explained to Ms Lynn McCaw of Leboeufs during that telephone conference if we turn on in the bundle to page 228.021, sorry, it's back two pages, H(A)75/228.021. You need

to go back two pages, Mr Streshinsky, my apologies.

Do you see there, Mr Streshinsky, an attendance note that's been drawn up by Ms Lynn McCaw and dated 14 June 2004, do you have that document?

A. Mm-hm.

Q. We can see just below the list of attendees that the purpose of the attendance note is said to be:

"Report to D Waldron (Money Laundering Reporting Officer at [Leboeufs] regarding money-laundering issues."

Do you see that? It's in the top half of the document, just before the bold line --

A. Oh, yes.

MRS JUSTICE GLOSTER: Did you see that document at the time?

A. No.

MR MASEFIELD: We can see, just below the list, we can see that Ms McCaw's note starts by saying:

"[Lynn McCaw] was called on Friday 11 June by Oleg Berger (OB) from [Leboeufs] Moscow to act on this matter. She also had a conversation with Vladimir Ashurov ... and Ksenia Arbatova ... of Salford. She received eight documents from [Ksenia Arbatova], but the identity of the parties to these agreements are not clear from these documents."

Then we can see what Ms McCaw appears to have been

told by Mr Ashurov and Ms Arbatova, she explains:

"Bryan Cave, the law firm acting for the purchaser (i.e. Oleg Deripaska...) set up for Roman Abramovich ... and [Oleg Deripaska] a company called Rusal. Apparently, [Oleg Deripaska] understood that he was dealing with [Roman Abramovich], but ... Berezovsky ... was behind [Roman Abramovich]. 25% of [the Rusal Aluminium] shares was sold to [Oleg Deripaska] in 2003. The remaining 25% is to be sold to OD. The share sale is supposed to end up with all the shares to be owned by OD through a holding company."

Now, does that passage also reflect your understanding at the time, Mr Streshinsky --

A. No.

Q. So you do not recall being told by --

MRS JUSTICE GLOSTER: Sorry, I didn't hear your answer.

A. No.

MR MASEFIELD: You don't recall being told by Mr Deripaska's representatives that Mr Deripaska understood that he was dealing with Mr Abramovich but that Mr Berezovsky was behind Mr Abramovich?

A. I do not recall that Mr Berezovsky -- I was told that Mr Berezovsky was behind Mr Abramovich.

Q. Are you able to explain where this information -- which Lynn McCaw of Leboeufs -- has come from if not from

Salford and from the meetings that you had just both attended with Mr Deripaska's representatives?

A. I have no idea. I was assisting Mr -- I was assisting Mr Patarkatsishvili in selling the 25 per cent of Rusal.

Q. And you attended two meetings on 4 June and 11 June with Ms Arbatova and Mr Deripaska's representatives, correct?

A. Yes. So, at least we knew that Mr Patarkatsishvili was involved, he was there, but we didn't know exactly whether Mr Berezovsky was there. So he might have been a partner of Mr Patarkatsishvili, he might have -- Mr Patarkatsishvili might have held the shares of beneficial interest in trust for Mr Berezovsky, but we didn't have any information on that.

Q. You say that, but what Ms Arbatova appears to have information on is that Deripaska understood he was dealing with Mr Abramovich but Berezovsky was behind Mr Abramovich. You say you weren't aware of that?

A. No, I was not aware of that.

Q. And we can see further down this attendance note that Lynn McCaw is asking the money-laundering officer, David Waldron, how much investigation they need to do on where the shares come from and who the client is, do you see that?

A. Yes.

Q. We can see over the page David Waldron's advice

H(A)75/228/022. He says that:

"Salford is an investment fund set up by BB and someone else."

Do you see that?

A. Mm-hm.

Q. He said that he thought Leboeufs needed to be careful. He goes on to say that he thinks due diligence needs to be done, he does not think that Leboeuf should simply rely on Bryan Cave, Mr Hauser's firm, for their money-laundering due diligence, do you see that?

A. Yes.

Q. Do you recall being made aware at the time that Leboeufs had raised money-laundering concerns and wanted to conduct proper due diligence of their own before proceeding with the transaction?

A. No.

Q. I'll come on to that in a moment, Mr Streshinsky.

Now Ms McCaw of Leboeufs issued a memorandum setting out her initial advice to Salford on 14 June 2004, and we have that advice earlier in the bundle at page 214 H(A)75/214. Please could you turn that up.

Do you have there a memorandum of advice from Lynn McCaw dated 14 June 2004?

A. Yes.

Q. You tell us that you received this memorandum of advice

from Leboeufs via an email from Ms Arbatova on 15 June 2004?

A. Yes.

Q. And presumably you would have read this memorandum of advice from Leboeufs at the time?

A. Yes.

Q. We can see from her memorandum that Ms McCaw says that she's received the eight documents she's been sent, those were the draft agreements, together with Ms Arbatova's "most helpful diagram and document diary", do you see that?

A. Yes.

Q. It's the opening paragraph.

Then Ms McCaw says:

"My understanding is -- and please advise if this is incorrect -- that [Leboeufs] is solely advising Salford in this transaction and that Salford is acting as financial advisor to BB. I understand that Salford is not advising Eagle, Deripaska, Abramovich or Madison. Nor is Salford advising Rusal Holdings or OJSC Russian Aluminium. However, Salford regards itself as 'honest broker' in that it would like to achieve a position which is satisfactory to all concerned.

"Despite Ksenia's extremely helpful memorandum, I have found it extremely difficult to follow the

documentation since it is frequently unclear who is being referred to and there are many blank spaces where parties have not been identified.

"However, for the purposes of this summary, I have assumed that X, Y, 'Vendor', and 'B' are in some way related to BB."

Do you see that, Mr Streshinsky?

A. That's right, yes.

Q. Then if we jump over the page we can see halfway down, about three paragraphs up from the heading --

A. Next page?

Q. It's the second page, about three paragraphs up from the heading "Document No" we can see this H(A)75/215:

"As you know [Leboeufs] is required by money-laundering prevention laws to follow an extensive checking procedure on a transaction by transaction basis even when existing clients such as Salford are involved. This will take some time."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. So it looks like you would have realised, if you read through this memorandum at the time, that Leboeufs were going to have to carry out money-laundering checks?

A. That must have been the case at the time.

Q. I'm grateful.

Then the remainder of Ms McCaw's memorandum proceeds to work through the various drafts of the transaction documentation which she describes variously, and we can see this on page 216 H(A)75/216, as seriously inadequate, circular, complex and opaque. They are some of the adjectives that you have picked out and refer to in your witness statement.

A. That's right.

Q. She concludes by saying on page 222 H(A)75/222 that she hopes her advice is of use to Salford in its further advice to BB. Do you see that, Mr Streshinsky?

A. Yes.

Q. Now, matters didn't rest there, did they, Mr Streshinsky? Leboeufs, as Ms McCaw had mentioned, were now obliged to carry out their money-laundering checks, do you remember that?

A. Yes, I've seen this in this memorandum. I don't remember focusing on that at the time.

Q. Well, let's come on to some more documents in a moment.

If we turn on in the bundle to page 293.001 H(A)293.001 you can see there there's a further memorandum that one of Ms McCaw's colleagues, James Morgan, sent to Ms Arbatova of Salford on 15 June 2004; do you see that, Mr Streshinsky?

A. I see that.

Q. We can see that various client identification documents are being sought both in relation to Salford Continental and in relation to Mr Berezovsky, do you see that, Mr Streshinsky?

A. Yes.

Q. Then over the page at 293.002 H(A)75/293/002, we can see that Leboeufs, quite properly, were also seeking various bits of transaction information, do you see that?

A. Yes.

Q. And if we drop down to the penultimate bullet point, we can see that the information which Leboeufs were asking for included information concerning the connection between Mr Abramovich and Boris Berezovsky, BB:

"... including why and how the 25 per cent indirect holding in [Rusal Holding] is held by [Mr Abramovich] for [Mr Berezovsky], and why transfer of shares is to be for nominal value ..."

Do you see that?

A. Yes, I see that.

Q. Do you think that Salford passed on these requests for further information to you, Mr Streshinsky?

A. No, I have never seen this document.

Q. Surely you would have been told about these requests that Leboeufs had raised and asked to assist in

answering them?

A. No, I haven't been asked.

Q. So you didn't receive these requests?

A. No, I didn't.

Q. And you didn't inform Mr Anisimov that Leboeufs and Salford had raised these money-laundering requests?

A. No.

Q. You see, the day after Leboeufs had raised these requests for further information regarding Mr Berezovsky and the relationship with Mr Abramovich, we know that on 16 June 2004 you gave an instruction to Salford on behalf of your principal asking them to suspend work on the transaction?

A. That's right.

Q. Do you recall that?

A. That's right, that's correct.

Q. Let's turn up the document. If you put bundle H(A)75 away and please could you be given bundle H(A)76 and turn within that to page 13 H(A)76/13. Now, this is a memorandum that was drawn up by Salford and sent to you on about 17 June 2004. There is a Russian version which we have as well in the bundle starting on page 42 H(A)76/42. I don't know which version you would prefer to work from, but if you're happy with the English, why don't we stick with the English at page 13.

MRS JUSTICE GLOSTER: Are you happy to work with the English, Mr Streshinsky?

A. I just don't remember seeing this one so maybe I need to look at the Russian one.

MR MASEFIELD: It's a document that's come from Mr Anisimov's disclosure, Mr Streshinsky, and we'll see that matters are addressed there closely on the transaction.

A. The document in Russian is where?

Q. It's at page 42 in the bundle.

A. The same bundle?

Q. Yes.

A. Mm-hm.

Q. Do you recall receiving this memorandum from Salford at the time, Mr Streshinsky?

A. No, I don't, but I must have received it.

Q. Are you happy to work from the English version, Mr Streshinsky?

A. Okay.

Q. If we turn back to page 13 H(A)76/13, we can pick it up in the third paragraph, just before the heading, Mr Streshinsky.

A. Okay.

Q. The third paragraph down, we can see that Salford write:

"At present the process of negotiating the

transaction is haphazard, chaotic and uncoordinated which may lead to goals entirely different from those initially attended being obtained. The poor organisation of the process may excessively complicate the transaction structure and make a 'Western-style transaction' impossible. There is a significant risk of a 'Russian-style transaction' being carried out, which does not provide the seller with adequate guarantees that the funds are legitimate and that payment will be made in full."

Then dropping down the page to the section headed "Process and Results. Negotiations". We can see that it says:

"The first negotiations on the transaction were conducted with Coalco representatives on 2 June 2004. At that time Salford's role in the transaction was not clearly defined and amounted to providing assistance to Coalco, as the representative of the Beneficiary, in the technical structuring of the transaction and support for its infrastructure (the setting-up of companies, etc).

"The transaction has evolved significantly from the time of the first round of negotiations to the present day. The transaction structure has been modified during the negotiations. Two meetings were held with the representative of the buyer, and the second of these

meetings, attended by the buyer's external consultants, determined the final structure of the transaction (to date, at least).

"At the 11 June meeting, the buyer's legal adviser (the international law firm Bryan Cave) provided drafts of eight transaction-related documents, which we and our legal advisers [Leboeufs] have analysed. The main results of this analysis is set forth in this memorandum and [Leboeufs'] memorandum dated 14 June."

Then we see this:

"On 16 June we were given the principal's instruction to suspend negotiations and work on the transaction. At the time of the suspension, we had held intensive consultation with Leboeuf ([Leboeuf's] participation in the transaction depends on the successful completion of due diligence in respect of the transaction participants) and the intermediary bank supporting the creation of the technical infrastructure for the transaction."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. Was it you that gave Salford the instruction to suspend negotiations and the work on the transaction?

A. Yes.

Q. And who was the principal on whose behalf you gave that

instruction to Salford, Mr Streshinsky?

A. It was by instruction of Mr Anisimov.

Q. Do you say that it was just a coincidence, Mr Streshinsky, that the instruction to Salford and Leboeufs to suspend their work on the transaction came the very day after Leboeufs had started to raise requests for further information about Mr Berezovsky?

A. Since I have not seen the request for information about Mr Berezovsky I cannot say anything about this.

Q. Well, you say you haven't seen it, but I suggest to you that Salford passed on the requests that had been raised by Leboeufs with them, passed them on to you, and you then spoke to Mr Anisimov and he told you that they should down tools.

A. No. In fact, this was a different -- the motivation to stop cooperating with Leboeuf and Salford was entirely different. I considered this was my initiative, my personal initiative because --

MRS JUSTICE GLOSTER: What, to suspend instructions?

A. To suspend Salford and Leboeuf, because I considered that Mr Patarkatsishvili had too many advisers acting, and this was really a chaotic moment at that time so -- I also found the memorandum which Leboeuf wrote on 14 June very lengthy and unhelpful because it was focusing on the matters which I didn't consider to be

important at that time, so I told Mr Anisimov that either I will be running the transaction and I will be responsible that this transaction is going to be closed, or Salford. He probably spoke to Mr Patarkatsishvili and that was their joint decision.

MR MASEFIELD: Why did you decide that you would go with the services of Akin Gump and Mr Faekov, who appear to have done little or no work on the transaction at this stage, and to stop the work that Leboeufs had been doing which was much more substantial?

A. Because I know Mr Faekov is very able lawyer, he was both Russian lawyer and English lawyer, so it was -- we made number of deals with Mr Faekov together in the past so it was very comfortable for me to work with Mr Faekov.

Q. Are you aware that Ms Lynn McCaw is a very senior partner at Leboeufs, she has over 30 years' experience in M&A, she is thought to be one of the best M&A lawyers in England?

A. I don't know her.

Q. We can see that in fact set out by Salford in the memorandum a bit further on. They go on to say this:

"The suspension of work may have an adverse effect on the quality of the services we provide and on the motivation of our employees ([Leboeufs] has currently

put at our disposal the services of one of the best M&A lawyers in England, and the intermediary bank has demonstrated its readiness to provide the required services in an extraordinarily short timeframe)."

MRS JUSTICE GLOSTER: Where are you reading from?

MR MASEFIELD: It's the second paragraph from the end of page 13, my Lady.

MRS JUSTICE GLOSTER: Thank you.

MR MASEFIELD: "Nonetheless, we hope that it will be possible to resume the work."

Then the paragraph at the bottom of the page:

"On 17 June we received proposals from [Leboeufs] on simplifying the document structure of the transaction. These proposals basically boil down to the possibility of drawing up all the current arrangements regarding the mutual obligations of the parties by preparing three documents (including the sale and purchase agreement) instead of eight."

So Leboeufs had in fact proposed something that would cut through the opaque, circular and complex transaction and reduce it just down to three documents, that's right, isn't it, Mr Streshinsky?

A. I don't know what Leboeuf proposed.

Q. Well, you do, because we've seen the memorandum of advice that they sent to you on 14 June.

A. Yes --

Q. Which you said you had seen?

A. Yes, I had seen that, and I've seen that they've characterised the documents as ambiguous, circular, unclear, et cetera, but I have not -- I don't remember there were any proposals in that memorandum of how to overcome that.

Q. I'm not sure we need to pursue that for the time being.

Can we turn on in this Salford memorandum to page 4 on the internal numbering, which we have at page 16 of the Magnum system H(A)76/16.

A. Okay, 4.

Q. We can see at the top of the page Salford say this:

"According to the information at our disposal, the buyer's external consultants have held preliminary consultations with representatives of the nominee shareholder ..."

So that would appear to be a reference to Bryan Cave, the buyer's external consultants, talking with Mr Abramovich's representatives, the representatives of the nominee shareholder, is that right?

A. Well, I see what's written here.

Q. And Salford go on:

"... and based on the results of these

consultations, the risks should be distributed between the beneficiary and the nominee shareholder as follows ..."

We can see that Salford then set out the representation sought. The first bullet point deals with the representations and warranties to be provided by the nominee holder, that is to say Mr Abramovich, of which the first, we can see, is:

"During the period from March 2000 up to the transfer of the shares to the beneficiary, the beneficiaries were the owners of the beneficiary interests in the shares."

Do you see that, Mr Streshinsky?

A. I see that.

Q. Then if we drop down to the next rounded bullet point that deals with the representations and warranties to be provided by the beneficiaries. Do you see that? "Coverage of risk by the beneficiaries"?

A. Mm-hm.

Q. Of which the first is:

"As far as the beneficiaries are aware, during the period from March 2000 up to the transfer of the shares to the beneficiaries, the beneficiaries were the sole owners of the beneficiary interests in the shares."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. So as at 17 June 2004, when this memorandum appears to have been written by Salford, Salford appears still to have been under the impression that there were two beneficiaries who were interested in the 25 per cent stake in Rusal, correct?

MRS JUSTICE GLOSTER: Well, he can't give his evidence as to what Salford thought or didn't think unless he knew that from his own knowledge.

MR MASEFIELD: My Lady, I'll move on.

MRS JUSTICE GLOSTER: We can all read what the document says and you can make such submissions as you wish in due course about it.

MR MASEFIELD: We can, my Lady.

Was that still your understanding at the time, Mr Streshinsky, that there was more than one beneficiary involved in the transaction? Was that your understanding at 17 June 2004?

A. Up until the meeting with Mr Abramovich's side, yes, I assumed that this could be the case.

Q. I'm grateful for that, and we'll come on that meeting in a moment.

Then if we look over the page H(A)76/17.

A. 76/17, yes.

Q. We can see a heading about halfway down which is called

"5. Status", do you see that?

A. 76/17?

Q. There's a heading "5. Status". The first heading below that is "Engagement of [Leboeufs]".

A. Yes.

Q. We can see that Salford say:

"In connection with the complex nature of the transaction, its risk, specific aspects to the participants to the transaction, the lack of clear economic grounds for the price and the political risks, we think it is absolutely essential that our client be represented in further negotiations on the transaction by an international law firm.

"Recognising this necessity but at the same time playing a fairly limited role in the transaction, Salford, not having any other opportunity on the part of the seller of the former shareholders of the holding company, was forced to use the services of its standing external consultant. Due to the general tightening of control rules and the political risks determined by the personal histories of the participants, [Leboeufs] was forced to commence a review of the lawfulness of the transaction and the origin of the funds, as a part of which [Leboeufs] submitted a query to which Salford must respond."

Do you see that, Mr Streshinsky?

A. Mm-hm.

Q. So Salford is saying here that it's going to be necessary to respond to the money-laundering queries that Leboeufs have raised, yes? That's what they're saying?

A. Yes, they said that they were:

"... forced to commence a review of the lawfulness of the transaction and the origin of the funds ..."

Yes.

Q. Then if we look over the page to page 6 on the internal numbering, page 76/18 H(A)76/18, we can see that about halfway down and just before a number of bullet points Salford say this:

"At this stage to successfully complete the transaction we believe that the following steps must be taken ..."

Do you see that?

A. Yes.

Q. And if we drop down to the fifth bullet point we can see that it's recommended by Salford that there be completion of the Leboeufs money-laundering review, do you see that?

A. "Completion of the LLGM review."

Yes.

Q. So even though their activities have been suspended, Mr Streshinsky, we can see that Salford were recommending that they be reinstated and, amongst other things, that Leboeufs should be allowed to complete its money-laundering due diligence, that's what this document shows?

A. Okay.

Q. We can see what the outcome of that was, Mr Streshinsky, if we turn on in bundle H(A)76 to page 61 for the Russian H(A)76/61 or 61T for the English H(A)76/61T.

Do you see there an email from yourself, Mr Streshinsky, to Mr Mishakov, Mr Deripaska's representative, dated 17 June 2004?

A. Right.

Q. We can see you've written to Mr Mishakov:

"Stalbek, following our phone conversation today I am confirming in writing that the decision has been taken to refuse from the services of Lebeff and that all information is to be directed via me."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Now tell me this, why had you been involved in a telephone conversation with Mr Deripaska's legal representatives regarding whether or not Leboeufs should be taken off the transaction?

A. I do not recall this telephone conversation, but I assume that I told Mr Mishakov that if we want to continue to put the transaction forward and actually execute it quickly, the company Leboeuf should be off the, you know, should go outside of the transaction. So I should be responsible for the transaction.

Q. And was the reason for that you were concerned that the money-laundering queries that Leboeufs had raised would drag out the process?

A. No, I did not focus on money-laundering queries at all at that time.

Q. You say that, but I suggest that is in fact the reason why Leboeufs were sacked?

A. I disagree.

Q. Well, let's come on to see what happened next when you speak with Mr Abramovich's representatives and then your communications with the First Zurich Bank, Mr Streshinsky.

On 17 June 2004, you sent two emails to Ms Khudyk suggesting ways in which it might be possible to restructure the transaction, do you remember that, Mr Streshinsky?

A. Yes.

Q. If we could turn those emails up. The first email you sent to Ms Khudyk we have in Russian at page 23 within

this bundle, if you could turn that up, please H(A)/76/23.

A. In this, the same bundle?

Q. Yes.

A. Yes.

Q. Do you see there an email from yourself to Ms Khudyk on 17 June 2004 timed at 10.05BST, do you see that?

A. Yes.

Q. We can see that it attaches a document called "Coalco Letter 17 June 04". It's not over the page in the bundle, I'm afraid the bundle is not very well ordered. But do you see the reference to the attachment, "Coalco Letter 17 June 04"?

A. What?

Q. If you look in the email heading, Mr Streshinsky, underneath the subject "Letter" it says "attachments", do you see that?

A. "Coalco Letter", okay, yes.

Q. As regards the text of the email which we have in Russian, I believe we have the translation of that at page 53 in the bundle H(A)76/53, but could you please confirm that for me, Mr Streshinsky.

MRS JUSTICE GLOSTER: The translation bundle or --

A. Do you want me to translate this?

MRS JUSTICE GLOSTER: No, just a second.

Could you tell me, is it in the T bundle on Magnum or in the ordinary bundle?

MR MASEFIELD: It's in the ordinary bundle, my Lady. If you turn on in the bundle to page 53, H(A)76/53, we have a text of email.

And looking back at the Russian, which you have at 23, is that a translation of the email that you have at page 23?

A. Okay.

Q. It is a translation --

MRS JUSTICE GLOSTER: Can you confirm it is, Mr Streshinsky?

A. Yes, one second.

Okay, yes.

MR MASEFIELD: So you can confirm that that is the translation of the document we have at page 23?

A. That is the translation, yes, that's right.

Q. I'm grateful.

And as regards the attachment, we have that at page 38 in the Russian H(A)76/38 and 38T in the English H(A)76/38T. If you could turn that up. If you're happy working from the English, I suggest we work from the purple page 38T.

A. Yes, I see this, yes.

Q. Can you confirm that you were the author of the Russian document which we have at page 38 of the Russian text?

A. We were drafting it together with Mr Faekov.

Q. I'm grateful.

We can see from the first paragraph of your letter that you are proposing to simplify the transaction, yes?

A. Yes.

Q. And that you then deal with dividends and shares separately under parts A and parts B, yes?

A. Yes.

Q. And under the heading "Dividends" we can see that you've written:

"BP (an individual) and B (a company with B as the sole shareholder) on the one hand, and M on the other hand, shall conclude the Deed of Accounting and Release which would approximately state the following ..."

Pausing there, BP was clearly a reference to Mr Patarkatsishvili, wasn't it, Mr Streshinsky?

A. That's right.

Q. And B company, that was a reference to a company which ultimately became Cliren?

A. That's correct.

Q. You tell us as much at paragraph 87 of your witness statement F1/02/77. The reference to the sole shareholder of B company, which you describe in parenthesis simply as B, you say, do you, that that reference was a typo?

A. That's correct.

Q. And you say that you understood that Mr Patarkatsishvili was the sole shareholder of B company and this therefore should have been a reference to BP rather than to B?

A. That's correct.

Q. Is that really your evidence, Mr Streshinsky?

A. Yes. Yes.

Q. You see, Mr Streshinsky, I suggest to you that the reference to B in parenthesis was not a typo at all. It was a reference by you to Mr Berezovsky, was it not?

A. No. No.

Q. Let's go on to have a look at what you say in this document, Mr Streshinsky. Have a look at what you say in paragraph 1, you say this:

"The parties acknowledge that according to the agreements dated 10 December 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery..."

Do you see that, Mr Streshinsky?

A. Yes.

Q. We know for a fact that B company, Cliren, did not participate in the sale of the shares for those plants on 10 February, or in the establishment and

capitalisation of Rusal; that's right, isn't it?

A. That's correct.

Q. And you knew that full well, didn't you, Mr Streshinsky?

A. Yes.

Q. That Cliren didn't participate?

A. I knew, of course.

Q. You had been involved yourself in the February 2000 sale, and you also knew that Cliren was, until very shortly before this second Rusal sale transaction, a Coalco company?

A. That's correct.

Q. So when you say in paragraph 1 that BP and B participated in the sale of KrAZ shares and in the formation and capitalisation of Rusal, you were not referring to Cliren, were you, Mr Streshinsky?

A. No, I was not. But when we were talking on 17 June about the structure of the transaction, there was no decision that company Cliren would be participating in the transaction. So that was only subsequently when we have chosen company Cliren to participate.

Q. The timing when you decide Cliren does not matter, Mr Streshinsky, because you say that BP and B participated in the sale of KrAZ shares, and you weren't referring to a company at all there, were you, Mr Streshinsky?

A. I was referring to the company. The idea was that Mr Patarkatsishvili and his company would be the parties to this transaction.

Q. In paragraph 1 you're referring to the historical participation of BP and B on the sale of the KrAZ shares. Which company do you say you were referring to at paragraph 1, Mr Streshinsky?

A. Well, the idea was that Mr Patarkatsishvili would be represented in the agreements by a company, because that is an additional layer of protection for any individual against liabilities.

Q. You see, the people you are referring to in paragraph 1 was not a company at all, Mr Streshinsky, it was a reference to Mr Patarkatsishvili and Mr Berezovsky, that's the truth of the matter?

A. No. No.

Q. And that shows that the reference to B as the sole shareholder, in the immediately preceding paragraph, is not, as you now seek to suggest, a typo but it was also a reference to Mr Berezovsky.

A. Okay, can I explain the reasons --

Q. Please.

A. -- why I believe this was a typo?

MRS JUSTICE GLOSTER: Yes, you may.

MR MASEFIELD: Please do.

A. If Mr Berezovsky would be involved, it would be clear that he should have been involved on the same basis as Mr Patarkatsishvili, so Mr Patarkatsishvili here as a physical person, and it's called here B as a company. So either Mr Patarkatsishvili would be a shareholder of B together with Mr Berezovsky, if that would be the case, or Mr Patarkatsishvili would be participating in this deal, Mr B, Berezovsky, would be participating in this deal, and their company would be participating in this deal.

So because -- as the structure of transaction assumed that Mr Patarkatsishvili had to guarantee the obligations for the company, it would be inconceivable to think that Mr Patarkatsishvili would be guaranteeing the obligations of company B, which was owned by Mr Berezovsky. And also it would be inconceivable to think that the buyers of the shares would want just the guarantee from Mr Patarkatsishvili and wouldn't want the guarantee from Mr Berezovsky.

Q. Mr Streshinsky, that's entirely right, and that is why Ms Arbatova in her document diary had suggested that it was going to be necessary to obtain a power of attorney from Mr Berezovsky so that Mr Patarkatsishvili could execute documents on Mr Berezovsky's behalf; do you remember that?

A. Yes, I remember the diary, you showed that to me.

Q. You see, what I suggest you were in fact proposing in this document, Mr Streshinsky, was that the identity of the second beneficiary, Mr Berezovsky, should be obscured by naming Mr Patarkatsishvili as one of the beneficiaries in the transaction and then interposing a shelf company, B company, as the other beneficiary in the transaction behind which would stand Mr Berezovsky. That, I suggest to you, is the much more natural reading of what we have at page 38T H(A)76/38T.

A. That's not correct, because the buyers requested personal guarantees from the beneficiary so we would not be able to shelter anyone in this transaction.

Q. Well, we'll come on to a number of other documents in a moment, Mr Streshinsky, which make it plain that even after this you were aware of Mr Berezovsky's interest in Rusal. But let's stay with this letter for the time being.

You then go on in paragraph 1 to say this, I'm reading from about five lines from the end:

"... and at the time of the establishment of [Rusal Holding] they became and still are beneficiary owners of 25 per cent of shares in [Rusal Holding] who, among other things, have the right to receive all dividends payable on the above 25 per cent shares in [Rusal

Holding] and the right to receive such shares, whereas [Madison] was and still is the nominal holder and trustee of such shares, and holds them for the benefit of B/BP."

A. That's correct.

Q. So your understanding at this stage was clearly that there was a trust relationship between Mr Abramovich and whom ever "B/BP" might be?

A. Yes, that was our understanding.

Q. And that was also the understanding of Salford and Leboeufs and Mr Deripaska's representatives, wasn't it, Mr Streshinsky?

A. That was.

Q. In the documents we've just looked at, yes?

A. Yes, that was.

Q. But Mr Abramovich's representatives were not happy about the trust description and structuring the transaction in this way, do you recall that?

A. Yes -- well, I mean, not that they were unhappy. They said that this was not correct.

Q. Well, let's come on to the document. Can we turn on in the bundle to H(A)76/65.

A. Yes.

Q. You should have there an email from yourself to Ms Khudyk of Millhouse Capital, do you see that?

A. Yes, I see that.

Q. We can see that this is a further email that you've sent on 17 June 2004 attaching a second version of your 17 June 2004 letter?

A. Yes.

Q. You see the attachment line "Coalco Letter 2"?

A. Yes.

Q. And we have the attachment a little earlier in the bundle, Mr Streshinsky. We have the Russian version at 51 H(A)76/51 and the English version at page 51T H(A)76/51T.

A. Yes.

Q. Can you confirm that you are the author of the Russian document that we have at page 51, Mr Streshinsky?

A. I confirm that we were drafting it together with Mr Faekov.

Q. And we can see the document starts by saying:

"As we discussed on the telephone, in order to abide by the assurance to banks that you made previously, we attach the following alternative structure ..."

A. That's correct.

Q. So it looks from this document as though you've had a telephone conversation with somebody on 17 June 2004?

A. That's right.

Q. Do you remember that telephone conversation,

Mr Streshinsky?

A. I don't clearly remember the conversation.

I remember --

Q. Do you recall whether it was Ms Panchenko that you spoke to?

A. I think it was either Panchenko or Khudyk.

Q. And in the course of preparing your evidence and coming here today, Mr Streshinsky, have you talked to anyone else about that telephone conversation?

A. No.

Q. I'm grateful.

Now, do you recall, Mr Streshinsky, being told what we can see you recorded here, that you needed to draw up an alternative transaction structure which would be consistent with the assurances or representations that Mr Abramovich's people had previously made to banks?

A. Well, I assume that -- when we sent this first letter to Ms Khudyk, they called us and they told us that we did not understand them, and that they did not have any relationship of trust. They explained to us that when opening the account of the company, like Rusal, or companies which they were holding, you have to put in the bank a certain form A, which is identification of beneficial owner, and no matter whether there's a trust behind or a physical person behind, you would have to

disclose that whoever is beneficial owner would be the beneficial owner, so for the bank documentation.

So they told us that there was no trust relationship between Mr Patarkatsishvili and Mr Abramovich.

Q. You see, that is not reflected in what we see in the opening words of this letter, Mr Streshinsky. What is reflected is that you've had a conversation with Mr Abramovich's representatives in which they have said that it needs to be reorganised to abide by the assurances to the banks. So they are proposing a different structure which will be consistent with what has previously been said to the banks.

A. Well, they were -- Mr Abramovich's side was the only party who knew what was the real ownership structure. So they told us that there was no trust arrangement, that the shares were not held in trust for Mr Patarkatsishvili.

Q. You see, Ms Panchenko believes that it was most probably her that you spoke to on 17 June 2004, and for the record we have Ms Panchenko's evidence in relation to this at Day 27, page 8, line 14 to page 10, line 16, but I don't think we need to turn it up.

What Ms Panchenko says is that it was most probably her that called you on the 17th, and that during the conversation which she had with you, Mr Streshinsky, one

of the arguments that she used was that in her capacity as financial director of Rusal she had made various statements to the outside world, including to the banks, to the effect that Mr Abramovich was the owner of the 25 per cent shareholding.

Now, do you recall a conversation with Ms Panchenko along those lines, Mr Streshinsky?

A. I don't recall it particularly but I think it's possible that she told me that. And I would like just to reiterate that even more so, that Ms Panchenko was the financial director of Rusal so she was responsible for the account opening for Rusal, and she had to declare in the forms A who was the beneficial owner of Rusal.

Q. She was also the person who, as financial director of Rusal, would have been making statements to the outside world, including banks, and she says that was one of the arguments that she used when she spoke to you as to why the transaction structure should be changed.

A. So?

Q. You don't have any clear recollection of this conversation?

A. No, I don't have a clear recollection of this conversation.

Q. There is certainly no suggestion in the letter that you had misunderstood the position. You don't say "We

understand we've got it completely wrong." You don't write that, do you, Mr Streshinsky?

A. Yes, there was nothing in this letter like that.

Q. And do you recall Ms Panchenko telling you a further reason why the transaction should be structured differently, namely that Mr Abramovich did not want further to document the existence of Mr Berezovsky or Mr Patarkatsishvili's beneficial ownership; do you recall that, Mr Streshinsky?

A. I don't recall that but that might have been the case.

Q. It might have been the case. You see, very shortly after this, on 17 June 2004, in compliance information that you were providing to First Zurich Bank, you said that you had been told by Mr Abramovich's people that they did not want to document the existence of the beneficial ownership relationship with Mr Patarkatsishvili, do you remember that?

A. Yes.

Q. So do you think you might have been told on this occasion by Mr Abramovich's people that they didn't want to document the existence of beneficial ownership?

A. Well, that was -- our position was always, and we always thought, that Mr Patarkatsishvili was the beneficial owner of this 25 per cent during this transaction. And in the compliance memo which you referred to, we wrote

that the position of Mr Abramovich was different.

Q. And it was different because they had made it clear to you that they did not want to document the existence of Mr Patarkatsishvili's beneficial ownership; do you remember that?

A. I do not remember whether they had made clear to me or it was -- I concluded this on the basis of all the discussions which I had, the information.

Q. Well, we'll come on to the document in a moment, Mr Streshinsky. But sticking with the document which we have at bundle H(A)76/51T for the time being, Mr Streshinsky, if we look down to "Part A. Dividends", we can see that you have left unchanged the opening words which state:

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

Do you see that?

A. Yes, it was the same typo. We just changed the first paragraph, I think, the point 1.

Q. So you say that despite going back to this document and substantially rewriting various parts of it, you had not picked up and corrected what you say was an obvious error in this passage?

A. I don't think we have substantially rewrote the document, we just -- I think we just rewrote the point 1

in this document.

MR MASEFIELD: My Lady, that might be a convenient moment.

MRS JUSTICE GLOSTER: No, I'm going on for a few minutes.

MR MASEFIELD: I'm grateful.

If we then look further down at bullet point 1, we can see that the first four lines of this document have not changed. You still refer to BP and B participating in the sale of the shares of KrAZ, don't you?

A. Yes, I see that.

Q. We can see that following your conversation with Ms Panchenko about the representations made to banks, the last five lines of paragraph 1 have changed. And what you now propose is that the parties acknowledge not the existence of any trust relationship but that:

"... in creating [Rusal Holding] [Madison] undertook to pay to BP and B sums equal to the sums received as income from the 25 per cent of shares in [Rusal Holding], including dividends from said 25 per cent of the shares, and sums/property received upon any sale of such 25 per cent of shares."

Then in parenthesis:

"(Thus, this was exclusively a liability right, rather than a trust or proprietary right -- attorney's comment.)"

Do you see that?

A. Yes.

Q. When you refer there to an attorney's comment, whose comment was it that you were referring to, Mr Streshinsky?

A. That was explanation of Mr Faekov.

Q. That was Mr Faekov of Akin Gump who had suggested that, was it?

A. Yes.

Q. I'm grateful.

Now, you tell us that one of your responsibilities in relation to the second Rusal sale transaction was to ensure that Cliren, the party that was to be a party to this transaction, had a bank account into which the monies due from Eagle and Madison could be paid, do you remember that?

A. Yes.

Q. You tell us F1/02/81 that you liaised with both First Zurich Bank and Parex Bank, and originally you had hoped that First Zurich would hold the bank account, but that due to difficulties with First Zurich getting comfortable with the transaction you ultimately used Parex Bank, correct?

A. Correct.

Q. I would like to look with you at some of the communications that you had with Zurich Bank and its

lawyers, Secretan Tryanov, around this time, Mr Streshinsky. You can put away bundle 76 but please can you be given bundle 77.

MRS JUSTICE GLOSTER: What paragraph of his witness statement are you dealing with at the moment?

MR MASEFIELD: My Lady, it's paragraph 96, which we have at F1/02, page 81 F1/02/81. Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, go on.

MR MASEFIELD: You can put away bundle 76, and if we turn in bundle H(A)77 to page 97, please H(A)77/97.

Do you see there an email, Mr Streshinsky, from yourself to Mr Escher dated 23 June 2004?

A. Yes.

Q. And can you confirm that Mr Escher was your contact at First Zurich Bank whom you had known for a number of years?

A. Yes.

Q. We can see that you've filled in the subject line "For Your Info", and you've attached a document called "RH Transaction History", do you see that?

A. Yes.

Q. If we turn back in the bundle to page 95 H(A)77/95, do you see there the document which I think is the attachment. It's a draft document dated 23 June 2004,

we see that in the top right corner; yes?

A. Yes.

Q. And it's stated to be "Highly confidential. Not to be disclosed externally"?

A. Yes.

Q. And called "Rusal Holdings Share Sale Compliance Information -- Transaction Structure and Background". Do you have that document?

A. Yes.

Q. And you tell us that you prepared this draft memorandum and sent it to Mr Escher on 23 June 2004, is that right?

A. No, that was done by Mr Faekov.

Q. It was done by Mr Faekov?

A. Yes.

Q. Did you assist him in the drafting of it, Mr Streshinsky?

A. I don't think so but I probably read it.

Q. Where would Mr Faekov have got the information which is contained within this memorandum, apart from you, Mr Streshinsky?

A. Because of his involvement in the process.

Q. Would his involvement and instructions have come primarily from you, Mr Streshinsky?

A. Yes.

Q. I'm grateful. The draft memorandum starts by saying:

"This note is prepared by [B corp] ('Seller') to [name of bank] ('Bank') in connection with the Seller's request to open an account for receipt of funds due to the seller in respect of:

"(i) the settlement of certain disputes with ... ('Madison') ... and

"(ii) the sale of 25 per cent of [Rusal Holding] to Eagle ...

"The contemplated transaction and the information herein are highly confidential and are provided to the Bank for compliance purposes only on the condition and understanding that the Bank will keep all the details herein strictly confidential."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Then you go on in section 1 briefly to outline the transaction structure, but then dropping down to section 2, entitled "Background", you say this:

"Ownership and Control.

"The Seller is own by [BP] ('BP') as the direct 100 per cent shareholder.

"Madison is indirectly owned and controlled by M ... Capital, the ultimate beneficial shareholder of which is R... A. A ...

"ECG is indirectly owned and controlled by Bas ...

the ultimate beneficial shareholder of which is owned and controlled by bass, the ultimate beneficial shareholder of which is O... V.D ..."

Pausing there and filling in the blanks, "BP" was a reference to Mr Patarkatsishvili?

A. That's correct.

Q. "M Capital" was meant to be a reference to Millhouse Capital?

A. "M" -- I think it --

Q. "Madison is indirectly owned and controlled by M ... Capital ..."

A. It's possible, yes. Yes.

Q. "RAA" was meant to be a reference to Mr Abramovich?

A. Yes.

Q. "Bas" was meant to be a reference to Basic Element, Mr Deripaska's group, correct?

A. Yes, I think so.

Q. And "OVD" was meant to be a reference to Mr Deripaska?

A. That's correct.

Q. Then if we turn over the page to page 96 H(A)77/96, you say this:

"2000 Purchase and Negotiations.

"Under an agreement dated 10 February 2000 between BP, RA and others (the '2000 Agreement', the original of which can be presented), BP, jointly with RA and [blank]

agreed to purchase from a number of sellers shares of..."

And then you list out the KrAZ, Bratsk and Achinsk assets, do you see that?

A. Mm-hm.

Q. When you referred in the first line to BP, RA and others, Mr Streshinsky, who do you say were the others to whom you were referring?

A. Mr Shvidler.

Q. Mr Shvidler is one of the others to whom you were referring but who was the other person included within the definition of "others", Mr Streshinsky?

A. It's written here, "BP jointly with RA" and in brackets --

Q. In the line above, Mr Streshinsky, it says "BP, RA and others" in the plural.

A. It doesn't say others, it's a bracket with --

Q. No, if you look at the line above, Mr Streshinsky:

"Under an agreement dated 10 February between BP, RA and others ..."

Do you see that?

A. Yes.

Q. So who were the others that you were referring to? You've named Mr Streshinsky. Who was the other person?

A. That was Mr Shvidler.

Q. And who was the other person?

A. There was no other person.

Q. Let me ask you this, Mr Streshinsky, why was there any sensitivity about naming Mr Shvidler in this highly confidential memorandum? Can you explain that to the court?

A. Because Mr Shvidler was not mentioned in this. So the way I think this draft was done is that Mr Faekov was -- drafted the paper, and I removed the names, so -- and since Mr Shvidler was never mentioned previously in this paper so I just crossed him out because he was not defined as a person.

Q. You see, you were prepared to indicate, at least by way of their initials, that Mr Patarkatsishvili and Mr Abramovich had been involved as purchasers.

A. Yes, I knew that Mr Patarkatsishvili, Abramovich and Shvidler were involved in the purchase.

Q. And we also know from other documents that we're coming on to that you in fact sent the 10 February 2000 master agreement to Mr Escher at First Zurich Bank, and the 10 February master agreement expressly identifies Mr Patarkatsishvili, Mr Abramovich and Mr Shvidler as the purchasers of the KrAZ assets?

A. Yes.

Q. So that suggests the fact that there was in fact no real

sensitivity about identifying Mr Shvidler as one of the purchasers?

A. Well, I mean, there was no real sensitivity about (inaudible). It was just for convenience sake, I put his name away I think.

Q. I agree with you there wasn't sensitivity about naming Shvidler as one of the purchasers. You see, what I suggest to you is that one of the other purchasers whom you had in mind, and in relation to whom there was real sensitivity, was Mr Berezovsky and indeed that's plain from documents that we'll come to in a moment, but you deny that, do you?

A. I disagree with you.

Q. You disagree with me?

A. Yes.

MR MASEFIELD: My Lady, do you want to pause there or shall we go on?

MRS JUSTICE GLOSTER: No, I'm going on. I will decide when I am going to pause, Mr Masefield.

MR MASEFIELD: I am grateful.

Then you go on to say that at the time of the 2000 acquisition, the aluminium assets were transferred to Mr Abramovich and his companies on the understanding that a prorata portion was being held for the benefit of Mr Patarkatsishvili, the legal form of the shareholding

to be agreed. Do you see that?

It's the second paragraph down H(A)77/96:

"... they were transferred to RA and his companies, on the understanding that a pro-rata portion is being held for the benefit [of Mr Patarkatsishvili], the legal form of the holding to be agreed."

Do you see that?

A. Yes.

Q. Then you say:

"In March 2000 [Mr Abramovich] has agreed with [Mr Deripaska] to form [Rusal] ..."

And Madison subsequently became a 50 per cent shareholder of Rusal Holding. Do you see that?

A. Yes.

Q. Then we see that you say this:

"At the same time, BP, Madison and RA negotiated as to the exact portion of the shares due to BP and as to BP's legal rights to such shares. The position of BP is that BP, being one of the purchasers, is the beneficial owner of 25% of shares of the Producer Shares (and/or of the respective portion of RH), whereas the position of RA was unclear: RA admitted that BP does have some sort of rights or entitlement in relation to the purchase of the Producer Shares (for example, on more than one occasion RA and his companies paid over to BP a pro-rata

portion of dividends on the Producer Shares), but at the same time did not want to document BP's beneficial ownership."

Do you see that, Mr Streshinsky?

A. Yes, I see that.

Q. That last comment, that Mr Abramovich's representatives did not want to document BP's beneficial ownership, was that something that you'd been told by Ms Panchenko in her conversation on 17 June, Mr Streshinsky?

A. I do not remember precisely what was told. That was my understanding of the situation. I thought that Mr Patarkatsishvili, by virtue of participating in the 10 February agreement, 10 February 2000 agreement, was beneficial owner of certain portion of shares of Rusal, but I didn't have any exact information.

Q. Well, I think you've said earlier that your recollection of that 17 June conversation isn't perfect.

A. Isn't perfect.

Q. It isn't perfect?

A. No.

Q. And we've now had disclosure, just ten days ago, of some further documents from Mr Abramovich which shows that on 16 June, so the day before your conversation with Ms Panchenko, there were internal discussions in which Ms Panchenko was told there should be no warranties

about beneficial ownership because Mr Tenenbaum did not want to further document BB's beneficial ownership.

I don't think we need to turn that up but the reference for the record is H(I) tab 4, page 17 H(I)/04/17. What I suggest to you happened -- and see if this jogs your memory, Mr Streshinsky -- was that in the telephone conversation with Ms Panchenko on 17 June 2004, she explained to you that they did not want to further document BB's beneficial ownership and that is what we therefore see reflected here in your compliance information to the Zurich bank. Is that possible?

A. That's possible.

Q. You go on in your memorandum to say this, I'm looking down towards the bottom of the page H(A)77/96, just before numbers (i) and (ii):

"In 2003-2004, the parties reached agreement (to be recorded in the Deed of Settlement), that as settlement for BP's participation in the acquisition of the Producer Shares, Madison will:

"(i) pay to the Seller a cash consideration (being accumulated dividends not yet paid over to BP); and

"(ii) transfer to the Seller 25% of the shares of RH (certain waivers of pre-emptive rights will be obtained by Madison in order to effect this).

"Since BP is unwilling to remain a minority shareholder of RH, he has simultaneously agreed with ECG (a majority shareholder of RH) that after he acquires the RH Shares, he will sell them to ECG, and the benefit of warranties of title to the RH Shares will flow from Madison directly to ECG. The purchase price is $ [blank]."

You subsequently filled in some of these blanks with your friend Mr Escher of First Zurich Bank over the telephone, didn't you, Mr Streshinsky?

A. I don't remember that.

MRS JUSTICE GLOSTER: Are you going to go to another document?

MR MASEFIELD: We are, my Lady.

MRS JUSTICE GLOSTER: Right, I'll take the break now.

MR MASEFIELD: I'm grateful.

MRS JUSTICE GLOSTER: Ten minutes.

You're not to talk to anybody about your evidence, please.

THE WITNESS: Okay, thank you.

(11.45 am)

(A short break)

(11.57 am)

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

MR MASEFIELD: Mr Streshinsky, First Zurich Bank had to

conduct their own money-laundering checks and due diligence, and to that end Mr Escher engaged the professional services of a well-known and highly respected Swiss firm of avocats called Secretan Tryanov. Do you remember that?

A. I didn't know about the involvement until I get the memo from this Secretan Tryanov.

Q. You got the memo from Secretan Tryanov around 24 June 2004?

A. Yes.

Q. We have Secretan Troyanov's advice, the memo that you're referring to, at page 75 in the bundle H(A)77/75.

A. 75, yes?

Q. Yes, please, if you could turn that up. We have for the record Mr Escher sending this document to you under a covering email on 24 June which is at page 133 but I don't think we need to turn that up.

A. Yes.

Q. Looking at page 75, we can see that the report is dated 23 June 2004 and is entitled "Re: Anti-Money Laundering Due Diligence" do you see that?

A. Yes.

Q. It's addressed to Mr Escher of First Zurich Bank.

If we glance on to page 82 H(A)77/82, we can see that it's been compiled by Mr Eric W Fiechter who is one

of the managing partners and the counsel at Secretan Troyanov. Do you see his signature on page 82?

A. Yes.

Q. Then turning back to page 75 H(A)77/75, we can see that Mr Fiechter says that on 17 June 2004, this is the first paragraph, he was requested by Mr Escher to review the possibility of First Zurich Bank opening a bank account, the beneficial owner of the funds to be deposited on the account being Mr Patarkatsishvili. Do you see that?

A. Yes.

Q. Mr Fiechter says:

"You provided us with a brief description of the involved persons/background and of the transaction which would generate the funds that would be wired on to the account that the Bank may accept to open."

Do you see that?

A. Yes, I see that.

Q. So it's clear from that, is it not, Mr Streshinsky, that Mr Escher and Mr Fiechter have been in communication with each other and Mr Escher has provided Mr Fiechter with a brief description of the people involved, yes?

A. Yes.

Q. And I suggest that Mr Escher's brief description which he supplied to Mr Fiechter came from the conversations

that Mr Escher had previously had with you filling in the blanks on your compliance information memorandum. That's right, isn't it?

A. That was one of the documents which I provided to Mr Escher.

Q. And the document which we saw you had provided included a number of blanks and you filled in those blanks with Mr Escher?

A. Well, can we go back to this document?

Q. We can. The document is page --

MRS JUSTICE GLOSTER: Where is the page where the blanks are filled in?

MR MASEFIELD: Page 95 H(A)77/95.

We don't have the blanks filled in in manuscript, my Lady. What I'm suggesting to the witness is that he explained to Mr Escher who the various parties involved were.

Because if we look at page 95, the compliance document you had prepared, that refers to people -- do you have page 95?

A. Yes.

Q. That refers to the people at the bottom of the page by way of initial only so there's reference to "BP", "RAA", "OVD". We've looked at that.

A. As you can see, this paper was provided when

Mr Fiechter's memorandum was already done.

Q. I'm not sure that's right, Mr Streshinsky, because --

A. Well, it says "draft 23 June" --

Q. It does.

A. -- and the opinion of Secretan Troyanov was June 23.

Q. Yes, and if you look over the page in Mr Fiechter's opinion to page 76 H(A)77/76, do you see he's referring to a second batch of documents?

A. Okay, yes.

Q. If you look down at the last bullet point, we see:

"Rusal Holdings Share Sale -- Compliance Information -- Transaction Structure ... (draft June 23...)."

So Mr Fiechter has seen --

A. Okay, so he included it.

Q. It has been included.

A. Yes, okay.

Q. What I'm suggesting to you, Mr Streshinsky, is that you filled in the blanks to Mr Escher over the telephone and Mr Escher then provided a brief description of the persons involved to Mr Fiechter, and that is what Mr Fiechter is referring to in the second paragraph on page 75 H(A)77/75. Do you think that is possible?

A. Second paragraph, it's "You provided us with a brief description...", yes. Well, it's possible that I have

filled the blanks for Mr Escher and he has provided that to Mr Fiechter.

Q. I'm grateful for that. In fact we'll come on to some email exchanges in a moment, Mr Streshinsky, which make it in fact perfectly plain that that is what happened, but let's stay with this memorandum for the moment. If we look further down this page, we can see that a list of documents has been provided to First Zurich including Mr Mishakov's diagram of the transaction and Mr Hauser's memorandum. Those are the first two bullet points in the first batch. Do you see that?

A. Yes.

Q. If we turn over the page to page 76 H(A)77/76, we can see that Secretan Troyanov have been also supplied with the second batch of documents including the contract dated 10 February 2000 and your compliance information. Do you see those documents?

A. Yes.

Q. Then in item 2, the heading "Results of our own factual research", we can see that Secretan Troyanov have commissioned their own factual research from a confidential source which they've attached as annex 1 to their opinion. Do you see that heading?

A. Yes.

Q. We have annex 1 to this report at pages 83 to 94 of the

bundle H(A)77/83.

A. Yes.

Q. We can see that First Zurich Bank have commissioned due diligence researches in relation to both Mr Patarkatsishvili, that's pages 84 to 92 H(A)77/84, and also in relation to Mr Berezovsky which we have at pages 93 to 94 H(A)77/93.

A. Yes.

Q. Do you see that?

Then turning back to the body of Mr Fiechter's opinion on page 76 where we were at H(A)77/76, we can see that in section 3 of his advice, Mr Fiechter has set out the general regulatory framework concerning Switzerland's effort to combat money-laundering. Do you see that?

A. Yes.

Q. And the legal analysis then runs through until page 80 of the bundle and we can then pick it up on page 80, page 6 in the internal numbering H(A)77/80.

A. Which page?

Q. Page 80 of the bundle, 77/80.

A. Yes.

Q. And there's a section 5 headed "Analysis". Do you see that, Mr Streshinsky?

A. Yes.

Q. We can see that Mr Fiechter says that:

"The first step of the analysis is to determine if you [by which he means Mr Escher of First Zurich Bank] may enter into business relations with Mr Patarkatsishvili."

Do you see that?

A. Yes.

Q. Then dropping down to the next paragraph, we can see that Mr Fiechter says:

"Based on the Annex 1 it would appear that the accusations directed against Mr Patarkatsishvili originate from Russia, and that they could be politically motivated. Based on this report it would also appear that Mr Patarkatsishvili would typically enter into the definition of the 'oligarch'.

"The initial phases of Mr Patarkatsishvili successful business career may raise uncomfortable questions. This however does not yet mean that Mr Patarkatsishvili was is linked to organised crime as defined by Swiss law. Under the Section entitled 'Alleged links to organised crime' of Annex 1 (points 2.12 and following) it would appear that certain allegations have been made concerning Mr Patarkatsishvili's links to organised criminal activities. It must be however noted that these

allegations either come from Russia (whose bias against Mr Berezovsky and Mr Patarkatsishvili is recognised by the Federal Research Division, Library of Congress) or are not documented.

"Another element that would tend to dismiss the allegation of links to criminal organisations is the fact that based on Annex 1, we are not aware of any freezing orders of Mr Patarkatsishvili's assets.

"It would appear based on our preliminary factual research, that you may wish to complete by interrogating alternative sources, that it is unlikely that Mr Patarkatsishvili is linked to criminal organisation within the meaning of [Article] 260 ... of the Swiss Criminal Code.

"Based on the foregoing, we do not believe that the general ban on certain clients would apply to Mr Patarkatsishvili."

Do you see all that, Mr Streshinsky?

A. Yes.

Q. Then we can see that Mr Fiechter goes on to say that the second step is to determine the degree of risk applicable to the transaction, and Mr Fiechter, as we can see, concludes that the risk should be considered as high. Do you see that, the last paragraph on the page?

A. Yes.

Q. Then over the page H(A)77/81, we can see that Mr Fiechter says that:

"The third and final step, which is ... as important as the previous steps ... is to conduct the enhanced transaction due diligence..."

Do you see that?

A. Yes.

Q. Mr Fiechter then proceeds to analyse the transaction from what he calls a "helicopter view basis" to see whether the entire picture passes the plausibility test. Do you see that in the second paragraph?

A. Yes.

Q. Mr Fiechter also says that the entire transaction should be x-rayed. He then says:

"It must be pointed out that it seems that Mr Patarkatsishvili has been extremely helpful in providing complete available documentation. These transparency efforts are a factor when conducting a due diligence."

Do you see that passage?

A. Yes.

Q. Mr Fiechter then proceeds to analyse the various contractual documents with which he's been provided and we can see that Mr Fiechter starts by analysing the 2000 agreement and noting that party 1 of the agreement was

said to comprise Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili, and he notes the 550 million sale price. Do you see that?

A. Yes.

Q. Mr Fiechter then turns on to consider the compliance information which you've provided and notes that Mr Patarkatsishvili participated in the purchase of the shares but that the agreement did not clearly define how the shares were to be allocated as between the purchasers.

Mr Fiechter says that:

"As a result none of the ... Shares were fully transferred to Mr Patarkatsishvili but were held by Mr ... Abramovich and his companies, on the understanding that a pro-rata portion is being held for the benefit of Mr Patarkatsishvili."

Do you see that?

A. Yes, I see it.

Q. Then Mr Fiechter notes that:

"In March 2000, Mr Abramovich... agreed with Mr... Deripaska to form Rusal..."

And that the producer shares were reorganised and consolidated into Rusal.

Mr Fiechter notes that they don't have any documentary evidence of that Rusal merger and the

restructuring of the shareholding.

A. Mm-hm.

Q. Then he says:

"It also appears that Mr Abramovich and Mr Patarkatsishvili have now agreed to settle the question of the ownership of the shares by transferring the shares representing 25% of Rusal Holdings.

"Based on the explanations provided to us this would mean that Mr Patarkatsishvili was entitled to half (50%) of Mr Abramovich's share in Rusal Holdings and therefore also half of the value of the 'Producer Shares'.

"This, in turn, would value Mr Patarkatsishvili initial contribution to the acquisition of the Producer Shares at 50% of the acquisition price, or USD 275,000,000 (50% of 550,000,000)."

Then turning over the page to page 8 of the internal numbering, page 82 of the bundle H(A)77/82, we can see Mr Fiechter says this:

"Upon receipt of the shares representing 25% of [Rusal Holding], Mr Patarkatsishvili intends to sell such shares to [Eagle Capital] for a consideration of USD 467,000,000.

"It must finally be noted that half of Mr Patarkatsishvili stake is held on a fiduciary basis in favour of Mr Berezovsky. The fiduciary agreement is

apparently not documented.

"Based on the foregoing Mr Patarkatsishvili's personal initial investment would therefore be USD 137,500,000 ... [and he does the maths] and his capital gain USD 104,000,000 ... [and again he does the maths]."

Do you see that, Mr Streshinsky?

A. I see that.

Q. So what Mr Fiechter is saying on page 8 of his opinion is that First Zurich Bank should only accept about half of the Rusal sale proceeds by way of Mr Patarkatsishvili's personal initial investment because the other half, he understands, belongs to Mr Berezovsky. That's what he's saying here, isn't it, Mr Streshinsky?

A. Apparently so.

Q. Let me ask you this, did you provide Mr Escher with the information that we see on the second paragraph of this page, namely that it must finally be noted that half of Mr Patarkatsishvili's stake is held on a fiduciary basis in favour of Mr Berezovsky?

A. No. All I have provided Mr Escher with is the batch of the documents which is listed here. It was the first batch and the second batch. So first batch included the memorandum of Paul Hauser and the original transaction

documents which included parties B1, B2, and then the second batch as well.

Q. So you never had a conversation, you say, with Mr Escher in which you explained that half of the funds were going to flow through to Mr Berezovsky?

A. I don't remember that.

Q. Well, we'll come on to the documents in a moment, Mr Streshinsky. You see the information that is referred to in Mr Fiechter's advice is not contained in either of the annexes which is attached to his advice. We've been through it very carefully and there's no mention of that information there.

A. Excuse me?

Q. The information that we see in the second paragraph of page 8 relating to Mr Berezovsky and the fiduciary arrangement in his favour is not contained in either of the annexes that were attached to Mr Fiechter's advice, the confidential information that Mr Fiechter had commissioned.

A. Well, you know, I did not know Mr Fiechter, I did not know that Mr Escher would talk to Mr Fiechter, and I didn't know what information Mr Escher gave to Mr Fiechter.

Q. Well, we'll see what you did say to Mr Escher and what he passed on to Mr Fiechter in a moment.

Can you turn on, please, within bundle H(A)77 to page 201 H(A)77/201. We can see here a string of three emails passing between yourself and Mr Escher of First Zurich Bank on 24 and 25 June 2004. I'd like to pick it up with the email which is first in time, which we have at the bottom of page 202 H(A)77/202. If you turn to that, do you see an email towards the bottom of the page which was sent by Mr Escher to you on 24 June 2004?

A. Mm-hm.

Q. We can see Mr Escher writes:

"Dear Ivan, I am very glad to be approached with your transactions and I am ready to also make the appropriate investment i.e.hiring the best lawyer(s) in order to properly structure the transactions within the frame of our rules and regulations. I am also bound to create innovative solutions on this basis.

"It is on the other hand also important that we know the true story from the very beginning in order to be efficient. The lawyers should not get suspicious, we need them on our side. I think there is still a chance to fix the transaction but please be prepared to put everything on the table when we meet on Tuesday at 9 am in our offices."

A. Mm-hm.

Q. Can I ask you this, Mr Streshinsky, why was it that the lawyers were getting suspicious? Do you remember that?

A. I did not know about the involvement of the lawyers until I get the memorandum.

Q. Well, you got the memorandum we've seen on 24 June 2004.

A. Yes.

Q. What Mr Escher is telling you here is that the lawyers are getting suspicious. Do you recall why the lawyers were getting suspicious, Mr Streshinsky?

A. No.

Q. Was it because you were now telling them, contrary to what they had been told previously, that Mr Berezovsky in fact had no interest in this transaction?

A. Well, maybe it was because they received first batch of documents with two beneficiaries, then the second batch of documents with the one beneficiary.

Q. Let's follow this email chain through a little further, Mr Streshinsky. If we turn back to page 201 H(A)77/201, we can see that you wrote back to Mr Escher the same day saying that you had been very open from the beginning and that you had told Mr Escher the whole story and sent him all the documents you had available. Do you see that?

A. Yes.

Q. So you had spoken to Mr Escher and you had told him the

whole story, yes?

A. Yes.

Q. Then if we go over the page to the top of page 202 we can see you say this:

"You on the other hand have confirmed to me that the transaction can be effected by the Bank for the full amount, including the flow-through funds after I have specifically explained you the consequences for me of the unjustified answer."

Now, just pausing there, Mr Streshinsky, the problem that you mention here arises out of the point which we've just seen Mr Fiechter was making on page 8 of his opinion, namely that Mr Fiechter had said, given the fiduciary arrangement with Mr Berezovsky, Mr Patarkatsishvili's initial investment could only be for about half the Rusal sale proceeds. Do you remember that point, Mr Streshinsky?

A. Yes, I remember that point from the -- yes.

Q. We have it back on page 82 of the bundle.

A. Yes.

Q. What you are referring to in your email which we have at page 202 H(A)77/202 is the fact that you had understood that First Zurich Bank could receive the full amount including the flow-through funds, and by flow-through funds you meant the 50 per cent of the

Rusal proceeds that you understood would then flow through Mr Patarkatsishvili's account to Mr Berezovsky.

A. I didn't understand that. I think that I was making reference to the full amount, so which -- and part of this amount Mr Fiechter called as flow-through funds.

Q. Can you please explain to the court what the flow-through funds were, Mr Streshinsky, that you were referring to in this email?

A. Mr Fiechter referred to the flow-through funds probably as the funds which have to be transferred by -- from Mr Patarkatsishvili to somebody else, so -- and I --

Q. I don't think Mr Fiechter --

MRS JUSTICE GLOSTER: Let him finish his answer, please.

MR MASEFIELD: Sorry.

A. So I was insisting that the -- that we need to talk about the ability to hold the full amount on the account of Mr Patarkatsishvili.

Q. If we turn back to page 82 in the bundle, Mr Streshinsky H(A)77/82.

A. Yes, I am on page 82.

Q. Mr Fiechter doesn't in fact refer to the flow-through funds at all. What he talks about is the fact that:

"Mr Patarkatsishvili's personal initial investment would therefore be ..."

And then he does two sums which broadly add up to

about half of the Rusal sale proceeds. The reference to the flow-through funds comes for the first time in your email that we have at page 202.

A. Well, we must have discussed with Mr Escher about this and I told him that the full amount should be on the account of Mr Patarkatsishvili.

Q. And what did you tell Mr Escher about the flow-through funds, Mr Streshinsky?

A. I -- actually I told to Mr Escher that Mr Patarkatsishvili is the beneficiary and he is to receive full amount. So this approach which Mr Fiechter was using was incorrect.

Q. You say at the top of page 202 H(A)77/202 that you had understood from Mr Escher that the transaction could be effected by the bank for the full amount including the flow-through funds. For the last time, what were the flow-through funds that you were referring to, Mr Streshinsky?

A. Look, I -- that happened a long time ago so I assume that Mr Escher and I discussed this approach, that part of the amount should be -- should stay on the account and part of the amount should go to Mr Berezovsky as alleged here in the -- Fiechter's memo. I told Mr Escher that this flow-through fund should not be a flow-through fund, it should be a full amount set on

the account of Mr Patarkatsishvili.

Q. So you are saying that you believed that you had a conversation with Mr Escher, you discussed the approach, and that part of the money should go to Mr Berezovsky, as alleged here in Mr Fiechter's memo?

A. Well, I disagreed with that. That's why I was so unhappy with Mr Escher and Mr Fiechter.

Q. What you are referring to in the email which you've just looked at is the fact that you had understood that First Zurich Bank could receive the full amount, including the flow-through funds, and your understanding was, as you just confirmed, that 50 per cent would flow through from Mr Patarkatsishvili's account to Mr Berezovsky?

A. No, that was not my understanding, sorry.

Q. Whose understanding about flow-through do you say that was?

A. That was the understanding of Mr Fiechter, that 50 per cent of the amount which would go on the account would be for the benefit of Mr Berezovsky.

Q. You don't correct that. What you say is -- do you say that's a misunderstanding, Mr Streshinsky?

A. That was a misunderstanding by Mr Fiechter.

Q. Well, you don't try and correct that, do you, at page 202? You're not saying he's got the wrong end of the picture, there are no flow-through funds. On the

contrary, what you are saying at the top of page 202 is that the transaction can be effected for the full amount including the flow-through funds?

A. Well, that probably must have been the term which we used when we have discussed it with Mr Escher, because he was under the impression that there is a flow-through fund.

Q. Let's look to see what happens next. You go on to say in your email H(A)77/202:

"On this basis I have confirmed to Mr A that the transaction can be done. He has confirmed it to B and started active negotiations with RA and OD. As you can imagine these gentlemen are not the least influential people in Russia."

Do you see that, Mr Streshinsky?

A. Yes.

Q. The reference to Mr A was a reference to Mr Anisimov, wasn't it, Mr Streshinsky?

A. Yes.

Q. And the reference to RA was a reference to Mr Abramovich, wasn't it?

A. Yes.

Q. The reference to OD was a reference to Mr Deripaska?

A. Yes.

Q. And it is Mr Abramovich and Mr Deripaska whom you are

describing as "not the least influential people in Russia", yes?

A. Yes.

Q. You then go on to say:

"So now I am personally in a disastrous situation as a person who has given untrue information. Do you think I can explain to these most powerful people about the capital gains or that signed by them agreements are not a proof of legitimacy of the transaction?"

Now, what consequences were there that you feared might follow, Mr Streshinsky, if you acted in a way which displeased these powerful people, Mr Abramovich and Mr Deripaska? What was the purpose of --

A. Well, that was a way to push Mr Escher to actually approve the transaction. I had no responsibility towards Mr A, Mr Abramovich, or Mr Deripaska. Mr Abramovich or Mr Deripaska.

Q. So the personally disastrous situation that you were contemplating here, you say that was just padding in your email?

A. It was exaggeration.

Q. Looking back at your email, we can see that you go on to say this:

"Cyrill, I do not like allegation that the transaction fails because I have not disclosed to you

all the information -- I have put everything [on] the table and explained everything to the lawyer when I had chance to."

So it appears that you had spoken to Mr Fiechter as well?

A. That's possible, yes.

Q. "I have told you that we have no influence over these people and we do not know what documents they will give."

And you had put everything on the table with Mr Escher and Mr Fiechter, hadn't you, Mr Streshinsky?

A. Well everything that was related to the transaction, yes.

Q. And as part of putting everything on the table with Mr Escher, you had told him about the fact that Mr Berezovsky also had a 50 per cent interest in the Rusal proceeds?

A. No.

Q. Well, let's come back to that in a moment.

A. I might have told him initially when I sent the first batch that Mr Berezovsky was involved, because the first batch of documents included Mr Berezovsky as B1 or B2.

Q. So you think you might have told Mr Fiechter then that Mr Berezovsky was involved?

A. Then, yes, I might have told him, yes.

Q. And on 24 June when you sent this email, you appear still to be saying that the funds would flow through from Mr Patarkatsishvili's account to someone else, you're not correcting that impression, are you?

A. Well, I thought it was enough to send a full description of the deal and, you know, all the documents which we had at the time.

Q. Let's come on to the next email in a moment, but just finishing this email off, you say:

"So I think it is your turn to be consistent and put everything in front of me: is this transaction approved or not?

"I am ready to meet any time, but I just don't see how with this approach of the lawyer and given situation we can satisfy his requests.

"Please give me the answer in writing."

A. Yes, I must comment that the approach which lawyer has taken was the initial -- you know, initial investment and split of proceeds I thought was totally irrelevant in that case.

Q. Well, if we turn back to page 201 H(A)77/201, we can see the response that you get back later the same day from Mr Escher.

A. Yes.

Q. He writes to you and he says:

"Dear Ivan, in Fiechter's analysis ([page number] 8) it is clearly stated which part of the amount can be held with us."

Do you see that?

A. Mm-hm.

Q. That is clearly a reference to internal page 8 of Mr Fiechter's analysis which we have back on page 82 H(A)77/82, isn't it, Mr Streshinsky?

A. Yes.

Q. It's the reference to Mr Fiechter advising that Mr Patarkatsishvili's initial investment could only be for 50 per cent of the funds received, yes?

A. Well not only 50 per cent but the capital gain.

Q. Yes. And then looking back at the --

A. It's much less than 50 per cent.

Q. Well, when you add the capital gain and the initial investment together, it comes to about 50 per cent of the Rusal proceeds.

But looking back at the email which we have at page 201 H(A)77/201, Mr Streshinsky, we can see that Mr Escher says immediately afterwards:

"I have given the same explanations to Fiechter as I have received from you. As far as the flow through is concerned Fiechter was not absolutely saying that we should not handle it but that it was rather better to

settle it outside the bank."

A. Where is it?

Q. It's in the email from Mr Escher to yourself, the second sentence.

A. "I suggest we are sitting together ..."

Yes?

Q. No, I'm in the first paragraph still. He refers firstly to Mr Fiechter's analysis, page 8, and then he says:

"I have given the same explanations to Fiechter as I have received from you."

And he goes on to talk about the flow-through funds.

So what Mr Escher is saying here, Mr Streshinsky, in black and white, is that he has given the same explanations to Mr Fiechter as he received from you. Correct?

A. Mm-hm. Oh, he's saying that, yes.

Q. And the explanations he's referring to are the explanations that we see on page 8 of Mr Fiechter's analysis H(A)77/82, namely the explanation in the second paragraph that half of Mr Patarkatsishvili's stake is held on a fiduciary basis in favour of Mr Berezovsky?

A. Yes.

Q. And you had provided that explanation to Mr Escher, and what he is saying in his email is he has provided that

same explanation to Mr Fiechter.

A. Well, that's Mr Escher saying what he provided to Mr Fiechter, Escher saying what he provided to Mr Fiechter. I don't know what he provided to Mr Fiechter.

Q. You don't? But what he is saying, we can all see it, is that the explanation came from you. Do you dispute that?

A. Yes, he is saying that.

Q. Do you dispute that?

A. I don't dispute that.

Q. You don't. So you did provide the explanation to Mr Fiechter that there was a fiduciary relationship with Mr Berezovsky and that half of the funds would flow through?

A. No, I did not provide this explanation. I might have initially provided this explanation when the full set of documents included B1 and B2, but not at the stage where, you know, where I knew exactly how the deal was structured.

Q. Well, you provided the information to Mr Fiechter and Mr Escher after the conversation you're referring to because the information that you provided was on 23 June 2004, whereas the conversation with Mr Abramovich's representatives was on 17 June 2004.

A. Yes.

Q. You see, Mr Streshinsky, what you were saying to -- what you had said to Mr Escher and what you had said to Mr Fiechter was that there was a fiduciary relationship with Mr Berezovsky and that only half of the funds could flow -- sorry, that the full amount should be paid into Mr Patarkatsishvili's account but then half would be paid on to Mr Berezovsky, and that's what you had told them, yes?

A. Well, that is possible, yes. That is possible.

Q. Well it's not possible; it's what these documents strongly suggest.

MRS JUSTICE GLOSTER: Well, that's a matter for me, isn't it?

MR MASEFIELD: It is, my Lady.

What we certainly don't see in these documents is your ever correcting that information, saying there was no flow-through funds?

A. Well, I think it's important to understand that I was, ever since 3 June when I saw the articles, and when we started to discuss this transaction, I thought that it might be possible that Mr Berezovsky is either a beneficiary or behind Mr Patarkatsishvili, and I --

MRS JUSTICE GLOSTER: Did you discuss that concern with Escher?

A. I might have discussed it. I don't remember it. I might have discussed it, but that's likely, that I discussed it.

I did not know the complete truth until I spoke to Mr Patarkatsishvili himself.

MR MASEFIELD: I'll come on to your conversation with Mr Patarkatsishvili in a moment, Mr Streshinsky, but as at 25 June when you are communicating with Mr Escher in this email string, it's quite clear that your understanding was that 50 per cent of the funds would flow through to Mr Berezovsky. Do you accept that?

A. That's possible.

Q. And you were now, as you put it, in a personally disastrous situation where you had told Mr Anisimov and others that the First Zurich Bank would accept the entire Rusal sale proceeds, but now, because of the concerns that Mr Fiechter had raised about the funds flowing through to Mr Berezovsky, it looked as if the Zurich Bank would only receive half of the Rusal sale proceeds, correct?

A. No, I said that, you know, I was concerned that Mr -- so we did not have an account for Mr Patarkatsishvili to receive money in, so it was important for me to have an account. So when I referred to a personally disastrous situation, I said that I promised that we will open an

account for Mr Patarkatsishvili in First Zurich Bank, and now it turns out that that's a problem.

Q. And what happened next, Mr Streshinsky, is that you tried to go through the whole story again but this time you air-brushed Mr Berezovsky completely out of the picture in the hope that the First Zurich Bank could be persuaded to accept the entire Rusal proceeds, do you remember that?

A. Well, I think we need to take it in connection with the negotiations we had with Mr -- with Rusal people and Abramovich people about the documents.

Q. You'd had that meeting with the Abramovich people back on 17 June 2004, correct?

A. Yes.

Q. And this correspondence is 25 June 2004?

A. That's right. Well, there were some drafts circling around so we need to look at that.

Q. Let's come on to see the compliance information that you then provided to the First Zurich Bank.

Can you turn on in the bundle to page 178.

A. That was -- okay.

MRS JUSTICE GLOSTER: Can we put this page away now or are you coming back to it?

MR MASEFIELD: We can, my Lady, the string of emails, unless your Lady had further questions.

A. 178?

Q. 178 H(A)77/178. You should see there an email that you sent to Mr Escher later on 25 June, and it says:

"Dear Cyrill.

"Pls find attached statement of facts and our analysis re the transaction.

Pls decide whether you want to send this to the lawyer."

Do you see that?

A. Yes.

Q. And we have the revised version of compliance information at page 204 in the bundle, if you want to turn that up (H(A)77/204.

A. Page 204.

Q. Do you there a document headed "RH Share Transaction -- Summary of Background and Compliance Position 025 June 2004"?

A. Yes, I see that.

Q. In the first paragraph, we can see that you say this:

"In connection with our recent discussions, we would like to attempt to explain the background to the transaction and our position regarding compliance in more detail."

Do you see that?

A. Yes.

Q. And then in section 1, you purport to set out the factual background, and you say this, in the third paragraph down:

"Then, at a meeting between BP and Vasiliy Anisimov, BP suggested that shareholders of Sibneft could also be potential buyers, and that the sellers should also open discussions and seek offers from them."

A. Yes.

Q. "Negotiations were commenced and were conducted with the active support and intermediation of BP. As a result, the shareholders of Sibneft were able to make a better offer than SUAL, and the sellers decided to sell to the shareholders of Sibneft. The shareholders of KrAZ have decided that, together with this sale, it would also make business sense to sell their shares of ... Bratsk...

"As a result, on 10 February 2000, the parties signed an Agreement (original available) by which the shareholders of Sibneft -- RAA, BP and ESh, agreed to purchase shares of the aforementioned companies at a price specified in that agreement."

Do you see that, Mr Streshinsky?

A. Yes.

Q. So whereas in your first compliance information sheet which we have at pages 95 and 96, you had said that the

KrAZ assets were acquired by BP, RA and others, you have now identified only one such other, namely Eugene Shvidler, and you have omitted to mention anybody else.

A. Yes.

Q. Do you have any explanation for that, Mr Streshinsky?

A. Because there were no one else -- there was no one else.

Q. And you say that despite what we see had been said about the flow-through funds and the fiduciary arrangement with Mr Berezovsky?

A. Well, look, I think that the personal relationship between Mr Patarkatsishvili and Mr Berezovsky had nothing to do with the acquisition of Sibneft -- sorry, acquisition of Krasnoyarsk assets. So that would mean that even if Mr Berezovsky had an agreement with Mr Patarkatsishvili that they share the profit from certain ventures, you know, he was -- doesn't mean that he was the purchaser.

Q. You say the personal relationship between Mr Patarkatsishvili and Mr Berezovsky; were you aware of a personal relationship between Mr Patarkatsishvili and Mr Berezovsky relating to the aluminium assets?

A. It was publicly available information that they were friends.

Q. Friends or partners?

A. And partners in some ventures.

Q. And partners, I'm grateful.

You say you were aware of that, were you?

MR MALEK: Let him finish his answer, it's overtalking the whole time.

MR MASEFIELD: Sorry, Mr Malek.

MRS JUSTICE GLOSTER: Do you want to add anything else to your answer?

A. I mean, I was aware from the public sources that Mr Berezovsky and Mr Patarkatsishvili were associated persons, so they dealt with each other, they were friends, as far as I was aware.

MRS JUSTICE GLOSTER: And what, were involved together in certain business ventures? Were you aware of that?

A. Yes, I knew that, for example, Mr Berezovsky and Mr Patarkatsishvili were the shareholders of ORT, and Mr Patarkatsishvili was the -- held executive position in the television. I was also aware of their relationship in Logovaz, I knew that they were partners, or I heard that they were partners.

MR MASEFIELD: We'll come on to some documents related to that in a moment, Mr Streshinsky. But you're also aware, I think it follows from your previous answer, that they were partners in relation to the aluminium assets as well?

A. I was not aware of that. I suspected that, that Mr Berezovsky might have been behind Mr Patarkatsishvili.

Q. You say you suspected it, but we'll come on to some documents that demonstrate that you were in fact aware of it.

Now, the others that you had previously referred to you've now identified as just Mr Shvidler. Let me ask you once again, why was there so much sensitivity in revealing Mr Shvidler's identity?

A. There was no sensitivity.

Q. You see, it makes no sense, Mr Streshinsky, that there had been concerns about naming Mr Shvidler in your earlier memorandum. What would make sense, however, would be a reluctance on your part to name Mr Berezovsky as one of the purchasers, particularly when you had been told by Mr Abramovich's representatives that they did not want to do anything to further document Mr Berezovsky's beneficial interest. That's right, isn't it?

MRS JUSTICE GLOSTER: Well, there are a lot of questions there. Can you just put one question at a time, Mr Masefield.

MR MASEFIELD: My Lady, it's more by way of a proposition actually than a question so why don't I move on to --

MRS JUSTICE GLOSTER: Well, you're here to cross-examine, not to put propositions. Can you put the question in a simple form so that he can answer it, please.

MR MASEFIELD: The reason why you were reluctant, Mr Streshinsky, to name the others in the earlier compliance document was because the others that you had in mind included Mr Berezovsky?

A. I disagree with that. I had -- I've seen the agreement of 10 February, there were only three names in this agreement: Abramovich, Patarkatsishvili and Shvidler.

Q. I don't think we need to work our way through the entirety of this further memorandum that you produced, but we can pick it up on page 205, Mr Streshinsky, in the third paragraph H(A)77/205. We can see you say this:

"Since BP was subject to political persecution, the parties could not document this deal at an earlier date, whereas RA's wish remains to fully and finally settle his relationship with BP and not to continue having a joint business, so as not to create political risks in RA's Russian business dealings. This is also a factor causing the difficulties of obtaining documents from RA's companies, since these documents partly do not exist, and partly are held by RA and his companies who are refusing to provide copies."

A. Mm-hm.

Q. Now, where had that information come from, Mr Streshinsky?

A. Well, I mean, this was very close group, they didn't disclose any documents unless they had to.

Q. Who was it that had explained to you that the reason why Mr Abramovich was reluctant to document his relationship with Mr Patarkatsishvili was due to Mr Patarkatsishvili's political persecution?

A. That was my assumption at the time.

Q. So that hadn't been explained to you, it was just an assumption?

A. Yes.

Q. But you felt it appropriate to put that assumption into compliance information, did you?

A. Yes -- well, because that was based on the factual information around Mr Patarkatsishvili's status --

Q. Are you sure --

A. That was the case.

Q. Are you sure that Ms Panchenko had not explained that to you in her telephone conversation of 17 June 2004?

A. I told you, I don't remember the conversation.

Q. Do you know whether Mr Escher did in fact provide this updated compliance information to his lawyers?

A. I don't know.

Q. You see, what we do know, Mr Streshinsky, whether they received this updated compliance information from you or not, is that Secretan Troyanov were by now deeply suspicious of the transaction and they wanted a deposition from Mr Anisimov setting out the full factual background.

A. Mm-hm.

Q. Do you remember that?

A. I don't remember that.

Q. Perhaps we could just turn that up, Mr Streshinsky. You can put bundle H(A)77 away and please could you now turn up bundle H(A)78. If you turn in that bundle to page 147 H(A)78/147.

A. Which page, please?

Q. Page 147.

A. Yes.

Q. Do you see there an email at the top of the page from yourself to Mr Fiechter?

A. Yes.

Q. Dated 1 July 2004, yes?

A. Mm-hm.

Q. We can see that you're now in direct contact with Mr Fiechter and you write to him saying:

"Dear Mr Fiechter.

"The draft of Mr A's deposition is not urgent as we

discussed it yesterday. I have prepared it and able to send it to you in Russian. However since our translators have been translating all transaction docs yesterday and today I was not able to send you the translation. If it is ok to send it in Russian -- please advise, I'll do it immediately."

Do you see that?

A. Yes.

Q. Can you confirm that the reference to Mr A was a reference to Mr Anisimov?

A. That's very likely, yes.

Q. And please can you confirm that what Mr Fiechter was looking for from Mr Anisimov was a deposition confirming the factual background to the transaction?

A. That is possible.

Q. We know that around this time you had Mr Fiechter's 8-page opinion, together with its annexes on Mr Patarkatsishvili and Mr Berezovsky, translated into Russian. Do you remember that?

A. That's possible, yes.

Q. I don't think we need to turn those up but for the record those documents are to be found at H(A)77, pages 181 to page 200 H(A)77/181.

A. Mm-hm.

Q. The reason I suggest, Mr Streshinsky, but tell me if I'm

wrong, that you had Mr Fiechter's advice translated into Russian was so that you could provide it to Mr Anisimov and explain to him why it was necessary for him to make a deposition?

A. That's possible, yes. That's possible.

Q. Do you recall providing Mr Fiechter's advice to Mr Anisimov around this time, Mr Streshinsky?

A. No, I don't.

Q. Do you recall speaking to him about the concerns that had been raised by First Zurich Bank?

A. I might have spoken to him --

MRS JUSTICE GLOSTER: Do you think you could possibly turn around and face me? I know it's difficult for you. It's just that I get a better reaction to your answers if I can see you face to face.

MR MASEFIELD: You must have raised these matters with Mr Anisimov, mustn't you, Mr Streshinsky, not least so that you could work with him on his draft deposition?

A. Yes, I possibly raised this. I just don't remember.

Q. I'm grateful.

Then if we turn on in the bundle to page 169 H(A)78/169.

A. 169, yes.

Q. We can see there are two further emails which passed between you and Mr Fiechter, do you see those,

Mr Streshinsky?

A. Yes.

Q. And looking at the bottom of the page, we can see that late on 1 July 2004 Mr Fiechter sent you a further email chasing for the documents as soon as possible in English to allow him to make a final evaluation, do you see that?

Bottom of page 169.

A. 169.

Q. "... would help if we had all documents as soon as possible in English to make the final evaluation. Will we get something from the auditors? If [so] what?"

A. What page, please?

Q. 169. You should have an email at the bottom from yourself.

A. Yes.

Q. To yourself, sorry, from Mr Fiechter?

A. Yes.

Q. Saying:

"... would help if we had all documents as soon as possible in English to make the final evaluation."

Do you see that?

A. Yes.

Q. Then if we look back up the page, Mr Streshinsky, we can see you've written back saying:

"Dear Mr Fiechter. Unfortunately, we have no news regarding the documents from auditors.

"The deposition of Mr A is being translated."

A. Yes.

Q. But we don't know what Mr Anisimov's deposition was or was not going to say because no drafts of it, or even a Russian version, have been disclosed. What we do know, Mr Streshinsky, is that about this time you took the decision to switch the transaction from the First Zurich Bank to the Parex Bank in Latvia. Indeed we can see that from the next document in the bundle, page 170, which is an email from yourself to Alexander Kay at Parex Bank forwarding him a draft fiduciary agreement.

Who was Alexander Kay, Mr Streshinsky, at Parex Bank?

A. I don't remember.

Q. Please can you explain to the court exactly why the switch was made to the Parex Bank at around this time, Mr Streshinsky?

A. Well, I was responsible for the completion of the transaction so I had to open the account. I've seen that the approach which Mr Fiechter and Mr Escher took was very conservative and it required a lot of documents. For instance, it required documents from Mr Deripaska about the source of funds, the audited

documents about the companies, the Rusal and the holding companies. It required the documents which would explain the initial amounts which were invested by Mr Abramovich to buy KrAZ. And I just thought that it was simply impossible to get all these documents. I tried but I could not get them. So -- and I decided that, you know, with this approach we will not be able to complete the transaction and open the account, so I had to switch to another bank.

Q. Did you ever finalise Mr Anisimov's written deposition?

A. Unfortunately I don't remember that.

Q. I'm grateful.

Now, you tell us, Mr Streshinsky, that in early July 2004, yourself and Mr Faekov travelled to Georgia to meet with Mr Patarkatsishvili and to discuss the transaction with him and to take him through the draft transaction documents, correct?

A. That's correct.

Q. And you also tell us, Mr Streshinsky, that it was around this time that the draft transaction documents were being amended. Do you remember that?

A. Yes.

Q. They were being amended so as to include a warranty from Mr Patarkatsishvili that he was the only ultimate beneficial owner of the 25 per cent stake in Rusal?

A. Yes.

Q. Together with a warranty that he was not holding for the benefit of anyone else?

A. That's correct.

Q. And you tell us that it was clear to you that you needed to obtain direct confirmation from Mr Patarkatsishvili that what he was being asked to warrant was correct?

A. Exactly. I thought that it was important to talk to Mr Patarkatsishvili about that because if that was untrue, then his liability could exceed the amount of consideration.

Q. I'm grateful.

And you say that both yourself and Mr Faekov saw Mr Patarkatsishvili in Georgia on Friday 9 July 2004?

A. That's correct.

Q. You say that you and Mr Faekov flew from Moscow to Tbilisi, then from Tbilisi to Batumi, and then you travelled by Mr Patarkatsishvili's helicopter to Ureki, to Mr Patarkatsishvili's private dacha. That's paragraph 129 of your statement F1/02/89.

A. That's correct.

Q. You say that once there you had a meeting with Mr Patarkatsishvili "underneath a covered area on the seashore", on which you sat down with him and went through the draft documents?

A. That's correct.

Q. You say that you were alone when you had this meeting with Mr Patarkatsishvili?

A. Yes.

Q. So Mr Faekov was not present at this particular meeting on the seashore?

A. He was sitting separately.

Q. Could he hear what you were saying?

A. I don't think so.

Q. And you say that during the course of this meeting with Mr Patarkatsishvili, he confirmed to you that he was the sole beneficial owner of the shares and had been since March 2000?

A. That's correct.

Q. And you say you also remember explaining to Mr Patarkatsishvili that "he could have potential liability if Mr Berezovsky brought a claim"?

A. Exactly, yes.

Q. And then you say that following this meeting and the dinner with Mr Patarkatsishvili, both you and Mr Faekov flew back to Moscow overnight and you then believe you updated Mr Anisimov on the position?

A. Yes.

Q. You see, the oddity about what you're telling us, Mr Streshinsky, is this: according to you, this was

a vitally important meeting, you needed direct confirmation from Mr Patarkatsishvili that he was indeed the sole beneficial owner of the Rusal shares, yes?

A. That's correct.

Q. And you had travelled all the way out to Georgia with Mr Faekov to get this confirmation from Mr Patarkatsishvili, yes?

A. Not only.

Q. Sorry?

A. Not only.

You see that this was the only time I saw Mr Patarkatsishvili prior to the transaction so I had to have a chance to explain to him how the transaction is structured and what risks he had.

Q. I understand. And Mr Faekov had travelled with you from Moscow to Tbilisi to Batumi, and from Batumi via helicopter to Mr Patarkatsishvili's private dacha?

A. Yes, we worked -- I believe we worked on 8 July in some office which was given to us by Mr Patarkatsishvili's assistant.

Q. And despite travelling all this way with you, and despite the obvious importance of this meeting, you tell us that Mr Faekov was not present, within earshot, when you had this critical discussion with Mr Patarkatsishvili?

A. Yes.

Q. And indeed you say this important discussion with Mr Patarkatsishvili took place with you alone?

A. Yes.

Q. My question for you is this, Mr Streshinsky: why, having travelled all this way with you for this vitally important meeting, why was it that Mr Faekov was not present during the meeting?

A. Well, Mr Faekov worked with me on 7 and 8 July in Georgia, he worked on the drafts, and he travelled with me to Patarkatsishvili in case some legal explanations would be required.

Q. Why, if this meeting was so important, Mr Streshinsky, did you not seek to document it then and there or report it to Mr Faekov and get him to draw up an attendance note?

A. Well, we don't usually draw up attendance notes.

Q. Why was it when you reported back on the matter to Mr Anisimov the following day you did so verbally, Mr Streshinsky, not by way of an email or an attendance note or a letter to Mr Anisimov?

A. I never sent emails to Mr Anisimov.

Q. Surely, given the importance of this meeting, Mr Streshinsky, you would have wanted Mr Faekov to be present as a witness, and you would have wanted to

document it by way of an attendance note or in subsequent correspondence?

A. Well, I have documented it by way of sending to Mr Patarkatsishvili the simplified structure of the deal and the risk memo which he has signed.

Q. We're coming on to that, but you didn't document what actually was said on this occasion in the course of your meeting with Mr Patarkatsishvili, did you?

A. I did not.

Q. You see, the further oddity, Mr Streshinsky, is this: just over a year later, in July 2005, in interviews held with Mr Berezovsky's lawyers, Mr Patarkatsishvili made it plain that in relation to the 25 per cent stake in Rusal he was not acting alone, and that Mr Berezovsky was also a beneficial shareholder?

MRS JUSTICE GLOSTER: Well, was Mr Streshinsky present at those meetings?

MR MASEFIELD: He wasn't, my Lady. But what I'm seeking to -- well, let me put this to the witness.

You say that on the occasion when you met him alone in the beach in Georgia, Mr Patarkatsishvili happily confirmed to you that he was the sole beneficial owner of the 25 per cent stake in Rusal?

A. Yes.

Q. That's really your evidence?

A. That is.

Q. You see, I have to say you're not telling the truth on this, Mr Streshinsky. And what Mr Patarkatsishvili in fact confirmed to you on this occasion in private was that he was prepared to warrant that he was acting alone if that meant that the Rusal sale transaction would go through, even though it did not reflect the true position.

A. That is not correct. I disagree with you.

Q. That was why, Mr Streshinsky, following this meeting with Mr Patarkatsishvili, you asked Mr Faekov of Akin Gump to draw up a risk analysis document explaining to Mr Patarkatsishvili the consequences for him if his warranty, that he was acting alone in relation to Rusal, turned out to be false.

A. Well, I think the draft of this document was prepared during our stay in Georgia, prior to our visit to Mr Patarkatsishvili.

Q. But it wasn't produced and it wasn't signed by Mr Patarkatsishvili then and there, it was worked upon and it was only sent to Mr Patarkatsishvili for his signature following this meeting in Georgia, correct?

A. Yes, correct.

Q. If you could please be given bundle H(A)81 and turn within it to page 195T H(A)81/195T.

A. Which page, please?

Q. 195T. You see here, Mr Streshinsky, an email from yourself to Mr Patarkatsishvili's administrative assistant, Paata, yes?

A. Yes.

Q. We can see that you're attaching various documents from Mr Patarkatsishvili to read and approve, yes?

A. Yes.

Q. In particular, you say in your covering email that it is most important to get Mr Patarkatsishvili to sign the document, transaction approval, 12 July 2004. Do you see that?

A. Yes.

Q. This was the document, wasn't it, Mr Streshinsky, in which Mr Faekov and yourself explained to Mr Patarkatsishvili what his exposure might be, amongst other things, in the event that his warranty that he was acting alone was false?

A. Yes.

Q. Let's turn that document up, if we go back in the bundle to page 181 for the English version. There's a Russian version which Mr Patarkatsishvili signed at 185, but if you're happy to work from the English, let's work from that H(A)81/181.

A. Yes.

Q. This is the document that you were attaching to your email and you were asking for Mr Patarkatsishvili to sign and approve?

A. Yes.

Q. The first two pages describe the deal structure and outline the effect of the main contractual documents, correct?

A. Correct.

Q. Then over the page H(A)81/182 and just above the space for Mr Patarkatsishvili's signature, we can see this:

"The basic risks associated with the given transaction are adduced as Appendix 1."

Do you see that?

A. Yes.

Q. You wanted Mr Patarkatsishvili to sign off on this because Mr Patarkatsishvili had indicated to you that the warranty that he was being asked to sign in relation to Mr Berezovsky was false and you therefore wanted to ensure that Mr Patarkatsishvili understood the risk he was running?

A. No.

Q. Well, let's have a look at the document.

A. Maybe I should explain why I asked him to sign that.

Q. Please do.

A. I wanted basically to be sure that Mr Patarkatsishvili

understands the deal structure because he was not reading the full set of documents, and that he also understands the risks involved with these transactions. I was basically covering my position so that, later on, nobody comes to me and says to me that I did not explain that, and that's why there is a problem.

Q. You were covering your position, and that is exactly what this document was designed to do.

Let's look at the document on page 183 H(A)81/183. The first risk that you and Mr Faekov identify is the risk of Madison not paying and the lack of any guarantee of payment of dividends. I don't think we need to worry about that.

The second risk that you and Mr Faekov identify is the risk arising from the fact that Mr Abramovich was not providing any guarantee about historical ownership rights to the shares.

A. Yes.

Q. Again I don't think we need to worry about that.

But then over the page at item 3 H(A)81/184, you identify as a risk for Mr Patarkatsishvili "Risk of demands by BB", do you see that?

A. Yes.

Q. The reference there to BB was clearly meant to be a reference to Mr Berezovsky, wasn't it, Mr Streshinsky?

A. That is correct.

Q. And if we look under "Nature of the risk" we can see that Mr Faekov -- this was drafted by Mr Faekov, wasn't it?

A. Largely, yes.

Q. We can see that Mr Faekov has written:

"BB may declare that sale of the shares infringed certain of his rights.

"For instance, BB might attempt to demand the [Rusal Holding] shares (see above), or seek the annulment of the sale of these shares, or make demand for damages allegedly suffered to them (say, as a result of the consolidation of 2002-2003, or the poor conduct of the business of [Rusal Holding] in 2000-2003, or the nonpayment to him of dividends, or the sale to [Eagle Capital Group] without his knowledge), or a share of the share sale proceeds.

"If this demand is presented to [Mr Patarkatsishvili] or to [Eagle Capital], or is based upon the actions of [Mr Patarkatsishvili], then [Mr Patarkatsishvili] will primarily bear the risk.

"If the demand is only based on the actions of [Mr Abramovich], then the above mentioned statement by [Mr Abramovich] may provide some protection, but it does not cover all situations and is also weaker than a guarantee

agreement -- it is always harder to win a case with a statement of facts than with a guarantee. In addition, it would be necessary to prove that [Mr Abramovich] actually knew of defects and recognised the existence of [Mr Berezovsky's] legal rights or dealt directly with [Mr Berezovsky].

"That aside, in the event that the court found in [Mr Berezovsky's] favour, [Mr Patarkatsishvili's] financial liability would be unlimited and could exceed the sum received for the shares.

"We are unaware of facts upon which [Mr Berezovsky] could rely."

We will come back in a moment to the facts which you, as opposed to Mr Faekov, were aware of, Mr Streshinsky.

But looking to the right-hand column, do you see that it's headed "Methods of elimination and assessment of the risk", yes?

A. **Mm-hmm.**

Q. **We can see Mr Faekov has written this:**

"The given risk could only be removed by way of receipt from [Mr Berezovsky] of a statement of release from obligations. As far as we understand it will not be possible to receive such a release."

Do you see that?

A. Yes.

Q. Now, that suggests there had been some discussion about obtaining a formal statement of release from Mr Berezovsky and that you had been told that it would not be possible to obtain such a release, do you recall that discussion with Mr Patarkatsishvili?

A. No, I don't. We assumed that this was not possible because Mr Berezovsky was openly and through mass media saying that he has a claim, so he would not be signing anything.

Q. But you say:

"As far as we understand it will not be possible to receive such a release."

You say that was just based on press reports?

A. Yes.

Q. You had had no discussion with Mr Patarkatsishvili about that?

A. No.

Q. And in any event we know that ultimately Mr Berezovsky was not asked to sign, and did not sign, a formal release as regards any claims that he might have in relation to the 25 per cent stake in Rusal; that's right, isn't it, Mr Streshinsky?

A. I think so.

Q. Then looking a little further down the right-hand

column, we see this, "Assessment of the risk":

"The risk may be real if [Mr Berezovsky] issues proceedings and wins a case against one of the parties. If [Mr Berezovsky] doesn't have any documents and witnesses confirming his participation in the deal, then court recognition of his rights is unlikely. All the same, the court process could be long, expensive and be discussed in the press."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Was that one of the reasons why Mr Abramovich's representatives had told you they did not want to further document Mr Berezovsky's beneficial interest?

A. Well, they never said that they -- that Mr Berezovsky had any beneficial interest.

Q. Well, I disagree about that, because we've seen the correspondence you've had with them earlier about representations to the banks, and we've discussed that, but I don't think we're going to go back over the ground.

A. No, no, excuse me. With regards to representations to the banks, they only said that the compliance information that they were giving to the bank was that Mr Abramovich was the beneficial owner and was the owner of the shares.

Q. They were saying that was the information they had already given to the banks?

A. Yes.

Q. And that therefore, going forward, you had to make sure the document was structured in a way that was not inconsistent with what had previously been said to the banks?

A. Yes, but that involved Mr Patarkatsishvili, not Mr Berezovsky.

Q. Correct.

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR MASEFIELD: It might be, my Lady.

MRS JUSTICE GLOSTER: Can I just raise with you, Mr Rabinowitz and Mr Sumption, Wednesday when there's going to be a strike. Can we still have Mr Rozenberg on Wednesday?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: There's no problem about --

MR RABINOWITZ: There shouldn't be. I will be here. If Mr Rozenberg is here and your Ladyship is here we can no doubt carry on.

MR SUMPTION: The four of us can sort it out.

MRS JUSTICE GLOSTER: It's just translators and --

MR RABINOWITZ: We need to speak to the transcribers. He speaks English so it will all be done in English, my

lady.

MRS JUSTICE GLOSTER: If there are any problems about Wednesday -- well, perhaps you could ascertain whether there are going to be any and let me know if there is going to be a problem.

Very well. How much longer are you going to be, Mr Masefield?

MR MASEFIELD: My Lady, I think I'm probably going to be another half an hour, maybe three quarters.

MRS JUSTICE GLOSTER: Right. Two o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

MR MASEFIELD: We looked this morning, Mr Streshinsky, at the compliance documents that you completed for First Zurich Bank, do you remember that? And we saw that you'd been able to set out a detailed history of the KrAZ assets sale and the purchases involved in the aluminium acquisition, yes?

A. Yes.

Q. I'd now like to go back very briefly with you, Mr Streshinsky, to the events of early 2000 to see what you in fact knew about Mr Berezovsky's interests in the aluminium acquisitions?

A. Yes.

Q. You see, you were not just involved in the KrAZ assets sale in the spring of 2000, were you, Mr Streshinsky?

A. Yes.

Q. Do you remember also being involved on behalf of Mr Anisimov, and providing advice to Mr Patarkatsishvili as to how he should structure his assets offshore?

A. Mr Anisimov, from time to time, asked me to organise for Mr Patarkatsishvili a relationship with either lawyers or fiduciaries or the banks.

Q. I'm grateful.

You can put away bundle H(A)81 which I think you still have. Please could you be given bundle H(A)18 and if we could turn within H(A)18 to page 200.001 H(A)18/200.001. Do you see there a telefax addressed to yourself and dated 27 March 2000 from Mr Hans-Peter Stager of Syndikus Treuhandalstalt?

A. Yes.

Q. Syndikus Treuhandalstalt is a Lichtenstein company which specialises in private client advice and off-shire structures; are you aware of that, Mr Streshinsky?

A. Yes.

Q. We can see the fax commences:

"Dear Mr Streshinsky.

"Reference is made to our meeting of last Thursday

and to our telephone conversation on Saturday. We may inform you that we have already ordered all [the] company, and most of them have just arrived. In the meantime, we have examined all documents given to us."

Do you see that?

A. Yes.

Q. So Syndikus Treuhandalstalt appear to have been ordering or setting up companies at your request around this time, is that correct?

A. Yes, they were intended to do that.

Q. They were intended to do that. The fax goes on, we can see this in the second paragraph:

"As you know, we have our due diligence, and we would like to have the following additional documents or inquiries."

And they set out various items that they would like by way of additional information, and if you look at the first item they've asked for, we see it's this:

"Valuation Report of Bratsk Aluminium Plant (as we have got from KrAZ and KrGES). Who has originally established these reports?"

Do you see that?

A. I see that.

Q. So you appear previously to have provided Syndikus Treuhandalstalt with some background financial

information in relation to KrAZ and KrGES, but not in relation to Bratsk; do you remember doing that, Mr Streshinsky?

A. I don't remember doing that. I've seen this letter -- well, I've seen this letter in the course of preparation. I don't remember this letter but it obviously was addressed to me.

Q. I'm grateful, and we'll come on to the significance of that in a moment. But sticking with the document for the time being and looking at the next bullet point we can see that they say:

"We need the enclosed declaration signed by the client (Mr P), that he executes the business for himself and that no members of the government, parliament, or any politician people are involved."

Do you see that?

A. Yes.

Q. If we look over the page H(A)18/200.002 we have the draft declaration to be signed by Mr AP, and would you agree with me that this was very likely to have been a reference to Mr Patarkatsishvili?

A. Yes.

Q. Do you remember being instructed by Mr Anisimov around this time to assist Mr Patarkatsishvili in setting up various offshore companies?

A. I don't remember that particular episode but that must have been the case.

Q. I'm grateful.

Looking back at page 200.001 H(A)18/200/001, we can see, skipping down to the fourth bullet point, this question:

"How is the relation between Sibneft and the four intermediary companies (subsidiaries or affiliated companies)?"

Do you see that?

A. Mm-hm.

Q. Syndikus Treuhandalstalt had obviously previously been provided by you with something which meant that they understood there was a link between Sibneft and what they refer to as "four intermediary companies".

If you keep bundle H(A)18 open, please could you also be given H(E)1, tab 4, page 7 H(E)1/04/7. Do you see there a diagram showing the February 2000 aluminium acquisition transactions, Mr Streshinsky?

A. Yes.

Q. Do you recall seeing this document before, Mr Streshinsky?

A. I might have seen it -- I've seen it in the course of preparation but I might have seen it before.

Q. At the time.

A. Yes.

Q. You see, we know from another document that Mr Anisimov has disclosed in this action, an index, that you do indeed appear to have had a diagrammatic schema of the aluminium transaction in your possession around this time. Do you think you did see a diagram similar to this one around the time of the KrAZ asset sale?

A. Yes.

Q. Do you recall whether or not you might have sent this diagram or a similar diagram to Syndikus Treuhandalstalt?

A. I might have done, yes.

Q. I am grateful. We see, looking in the diagram, in the middle of the page, there is a faint circle around the four companies with the writing "Sibneft" do you see that? The four pages (sic): Runicom Fort, Galinton, Palmtex, Dilcor, are all included within an ellipse with Sibneft, do you see that?

A. Yes.

Q. And immediately below that there's a further ellipse called "Intermediary" with four companies indicated?

A. Mm-hm.

Q. And the arrows pointing from the Sibneft circle to the intermediary circle, do you see that?

A. Yes.

Q. What I suggest is that you had indeed supplied a copy of this diagram, or something very similar to it, to the Syndikus Treuhandalstalt people and they, having seen it, were querying the nature of the relationship between Sibneft and the four intermediary companies. Do you have any recollection of that?

A. No, I don't have a precise recollection of that.

Q. Let me ask you this, Mr Streshinsky: what other document or information apart from this diagram do you think that you might have supplied to Syndikus Treuhandalstalt which would cause them to ask the question that we see in the fourth bullet point? Is there any other document that you can think of?

A. Well, I think I've given them the KrAZ and Krasnoyarsk GES relation(?) report because I have had that in my possession.

Q. But those don't refer to Sibneft and the four intermediary companies. So is there anything else apart from something similar to this diagram that you think you could have supplied?

A. Yes, I might have given this diagram.

Q. I'm grateful.

Looking back at the Syndikus Treuhandalstalt fax, and skipping down to the last bullet point, we can see it says this H(A)18/200.001:

"Please confirm the Austrian Banks with addresses, which will transfer the money to the new accounts."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Do you recall that around this time Mr Patarkatsishvili had indeed set up a bank account with an Austrian bank called Kathrein & Co?

A. No, I didn't know that.

Q. The name doesn't ring any bells?

A. No.

Q. Mr Patarkatsishvili also incorporated around this time two companies, Bili Holdings and Bili SA. And Bili SA then opened an account with Austrian bank Kathrein & Co. Do you remember any of that, Mr Streshinsky?

A. No, I don't know these names.

Q. During the year from March 2000 to March 2001, substantial sums of over 50 million were then paid into Bili SA's account with Kathrein & Co from companies that were associated with Mr Abramovich, which Mr Patarkatsishvili then used to purchase, fit out and maintain an aeroplane. Do you remember any of that, Mr Streshinsky?

A. I don't know that.

Q. Now, in order to open Bili SA's bank account with Kathrein & Co and purchase his aeroplane,

Mr Patarkatsishvili needed to have his commission agreements relating to the aluminium acquisition transactions formally notarised. That happened on 16 March 2000, 11 days before this fax was sent, and the commission agreements were notarised in Moscow before a public notary and witnessed by Ms Tatyana Zaitseva. And Ms Tatyana Zaitseva was a Coalco employee, wasn't she?

A. She was a secretary of Mr Anisimov.

Q. I'm grateful. Do you recall arranging to help Mr Patarkatsishvili get his commission agreements notarised around this time?

A. No.

Q. You have no recollection of that?

A. No, I haven't.

Q. Let me show you one final document, Mr Streshinsky, to see if we can help jog your memory. If you keep H(A)18 open, but turn back in bundle H(E)1 to tab 3, page 4, for the Russian H(E)1/03/4, and 4T --

A. Which bundle, 18?

Q. It's the one with the diagram in it, if you turn back in that to tab 3.

MRS JUSTICE GLOSTER: H(E)1, tab 4?

MR MASEFIELD: We were in tab 4, my Lady, I'm turning back to tab 3.

The start of tab 3 is a Russian document, and we have the translation on page 4T and following H(E)1/03/4T.

A. I see the Russian document.

Q. Looking at the Russian, do you recognise this document, Mr Streshinsky?

A. I haven't seen this document before. Well, I've seen it during the preparation to the witness statement but I haven't seen it at the time.

Q. Now, we know that this explanatory note was drawn up around the same time as the Syndikus fax, that is to say, March 2000, for reasons that I don't need to go into for the time being. But looking at the explanatory note, Mr Streshinsky, do you see that stage 1 is entitled "Initial. Opening accounts, transfer of funds", do you see that?

A. Mm-hm.

Q. There is then a reference to:

"... intermediary services for the arrangement of redistribution of shares in the aluminium complex ..."

Do you see that, on the right-hand side?

A. Mm-hm.

Q. Then a bit further down it says:

"Amount of the Intermediaries' Compensation: About 100 million USD."

Do you see that?

A. Mm-hm.

Q. That is a reference to the sums due under the commissions agreements which Mr Patarkatsishvili had notarised on 16 March, were witnessed by Ms Zaitseva, okay?

A. Mm-hm.

Q. Then we can see there's a short underlying passage which says this:

"In order to carry out the intermediary transaction and also the first stage of the Programme, it is assumed that it will be necessary to perform the following actions."

Do you see that?

A. Yes.

Q. Then it says:

"1. Providing interested parties (lawyers, the persons conducting the companies' business, the bank) with the set of documents constituting the Transaction, including:

"Diagrams of the transaction;

"Cash flow tables;

"Agreements (protocols) between the purchasers and the client -- the intermediaries' representative;

"Copies of the share sale and purchase agreements of

the factories;

"Background, financial and other information about the subjects of the transaction (KrAZ, GES)."

Do you see that, Mr Streshinsky?

A. Yes.

Q. A lot of that ties in with the Syndikus fax of 27 March that we were just looking at.

A. Yes.

Q. For example, do you recall the Syndikus Anstalt people had received financial information for KrAZ and KrAZ GES from you, but they were asking for similar background information for BrAZ; do you recall that?

A. Yes.

Q. So what you appear to have sent the Syndikus people by way of background financial information is precisely the background financial information that it was envisaged by the author of the explanatory note would be sent to interested parties, lawyers and so on, correct?

A. Correct.

Q. Do you recall the Syndikus Anstalt people appear to have received a diagram of the transaction structure that we've just looked at, and were querying the relationship?

A. I don't remember but I think they've received it.

Q. And that would appear to tie in with the information

that it was envisaged would be sent to interested parties, the first bullet point in this explanatory note, yes?

A. Yes.

Q. Do you recall that the Syndikus Anstalt people had also in their fax used similar language to what we see employed here, the language of "intermediary client", and they had referred to four intermediary companies. We can see four intermediary companies being referred to here, can't we, Mr Streshinsky? If you look about halfway down on the page to the word "Intermediaries", where it's capitalised --

A. It's on the Syndikus letter?

Q. No, on the explanatory note that we have at page 4T H(E)1/03/4T, about halfway down we have in capitalised words:

"Intermediaries: Companies belonging to BAB (2 companies) and BShP (2 companies)."

Do you see that?

A. Yes.

Q. Then if we look down to the bottom of the first page of this explanatory note, Mr Streshinsky, and in particular if we look at bullet points 2, 3 and 4, we can see that what is proposed is the acquisition of the intermediary companies on behalf of clients, opening bank accounts

for the intermediary companies and the official transfer of commission fees into the bank accounts. Do you see that?

A. Yes.

Q. And that also ties in with the Syndikus fax of 27 March, because do you remember Syndikus Anstalt people talked about ordering offshore companies, and they talked about transferring monies into the new Austrian bank accounts?

A. Mm-hm.

Q. You see, what I suggest to you, Mr Streshinsky, is that you were the author of this explanatory note?

A. No.

Q. You deny that, do you?

A. I deny that.

Q. And the fax that we have from the Syndikus Treuhandalstalt people to you on 27 March is evidence of your involvement in what we see described as stage 1 of this note.

A. Well, I did not see this note, I was not author of this note, I was simply asked to provide certain information to Syndikus and communicate with them.

Q. You say it's just a coincidence, do you, Mr Streshinsky, that around the very time when this note appears to have been drawn up you were liaising with Syndikus people and carrying out the tasks that appear to have been

envisaged at stage 1?

A. I'm sure it's not a coincidence, I was just asked by Mr Anisimov to assist and I had to send certain information.

Q. You see, what's significant about the explanatory note, Mr Streshinsky, is this: the explanatory note was not just written for the benefit of Mr Patarkatsishvili because although it contains some references to the client in the singular, it also contains references to the clients in the plural.

We can see that from the opening words of the explanatory note. If you look up at the top of the page, do you see it says:

"In connection with the Clients' proposed visit to Europe..."

Do you see that?

A. Mm-hm.

Q. If we look at that, about halfway down, where it says "Intermediaries" in capitalised terms, it's fairly clear that the clients who are being referred to are BAB and BShP, that is to say Mr Berezovsky and Mr Patarkatsishvili, do you see that?

A. Yes.

Q. And then if we go on over the page H(E)1/03/5T and look at stage 2 of this explanatory note, stage 2 is

entitled "The Main Stage. Structuring of the Assets", do you see that, Mr Streshinsky?

A. Mm-hm.

Q. We can see the author of the explanatory note says:

"The second stage of the Programme consists of two parts:

"Distribution of the assets between the partners in proportion to their interests.

"Creation of a single company, determination of the rules for its functioning, transfer of the assets to the single company's ownership."

Do you see that?

A. Mm-hm.

Q. Then it says:

"It is proposed first of all to distribute the assets belonging to the partners in the main business projects, including the following."

There then follows a list of assets, yes?

A. Mm-hm.

Q. Those assets include a reference to Sibneft at item 3?

A. Mm-hm.

Q. And those assets also include a reference to the aluminium complex at item 2, do you see that?

A. Yes.

Q. That reference to the aluminium complex was a reference

to the KrAZ, BrAZ and Achinsk assets which you knew, as a result of your involvement in the February 2000 sale, both Mr Berezovsky and Mr Patarkatsishvili had acquired ownership interests in?

A. Well, I knew that Mr Patarkatsishvili acquired the ownership interest because I've seen the documents. I didn't know anything about Mr Berezovsky.

MRS JUSTICE GLOSTER: Can you speak up a bit, please?

A. I knew -- excuse me. I knew that Mr Patarkatsishvili was involved because he was one of the purchasers in this agreement of 10 February but I didn't know about any involvement of Mr Berezovsky.

MR MASEFIELD: You say that, Mr Streshinsky. But if you were the author of this document, or you were involved in implementing the stages that are described here, what it demonstrates is that you would have known at March 2000 that Mr Berezovsky and Mr Patarkatsishvili were partners and, secondly, you would have known that Mr Berezovsky and Mr Patarkatsishvili had ownership interests in the aluminium complex that would come to form part of Rusal. But you deny any such knowledge, do you, Mr Streshinsky?

A. Yes. This is the way you put it. I put it very simply: I was assisting Mr Patarkatsishvili in opening the account and establishing the relationship with the

banks.

Q. We say that this was knowledge which was not just personal to you, Mr Streshinsky. You've told us in paragraph 17 of your witness statement F1/02/59 that whenever you did work for Mr Patarkatsishvili it was always at the instruction of Mr Anisimov. Do you remember that?

A. That's correct.

Q. And you would therefore have shared with Mr Anisimov the information that you acquired in the course of providing these services to Mr Berezovsky and Mr Patarkatsishvili?

A. I did not provide any services to Mr Berezovsky.

Q. You see, both you and Mr Anisimov have to deny that knowledge, don't you, Mr Streshinsky, because otherwise it fatally undermines not only your case on the overlap issues in these proceedings but also Mr Anisimov's defence in Metalloinvest?

A. Well, that's your opinion. What can I say?

Q. You see, there's one final thing, Mr Streshinsky, that's striking about this explanatory note and it's this. Do you see towards the bottom of the page, just before the last five numbered paragraphs, there's a short paragraph which says this:

"This stage concludes in the creation of a single company and the transfer of all the assets of the

partners into its ownership. This company's founding documents must provide the legal rules of the game, including ..."

And then various matters are set out, including mechanisms for protecting minority shareholders, how to resolve deadlocks and the procedure on termination by one partner. Do you see that?

A. Yes, I see.

Q. Then turning over the page H(E)1/03/6T, under the heading "Stage 3. The Final Stage. The Procedure and the Results of Joint Work", do you see that heading?

A. Yes.

Q. It says:

"All the legal activities of the joint company and the businesses controlled by it must be carried out by Western lawyers."

Then in the next paragraph:

"Once a year the joint company's activities and its financial results will be confirmed by one of the major international audit companies."

Do you see that, Mr Streshinsky?

A. Yes.

Q. And that advice ties in directly, Mr Streshinsky, with Mr Berezovsky's evidence given in these proceedings, and long before --

A. Was what?

Q. It ties in with Mr Berezovsky's evidence given in these proceedings, long before this explanatory note was disclosed, that he remembers Mr Anisimov advising both himself and Mr Patarkatsishvili around the time of the Dorchester Hotel meeting in March 2000 that they should structure their assets offshore in a very precise legal way, and subject to western as opposed to Russian law.

That was the advice I suggest to you that both you and Mr Anisimov were giving to Mr Berezovsky and Mr Patarkatsishvili around this time?

A. Well, I did not speak to Mr Berezovsky, I did not speak to Mr Patarkatsishvili. I only spoke to Mr Anisimov, and if Mr Anisimov advised something to Mr Patarkatsishvili, I don't know what he advised.

MR MASEFIELD: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: No re-examination.

MR ADKIN: No questions.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming along.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Particularly given your visa difficulties.

THE WITNESS: Thank you.

(The witness withdrew)

MR MALEK: My Lady, that concludes the evidence on behalf of the Anisimov defendants, and I think that concludes all the factual evidence in this case.

MRS JUSTICE GLOSTER: Right.

Mr Rabinowitz.

MR RABINOWITZ: We're on to Russian law experts and, my Lady, we call Dr Rachkov.

MRS JUSTICE GLOSTER: I've read Dr Rachkov's expert statement.

DR ILIA RACHKOV (sworn)

MRS JUSTICE GLOSTER: Do sit down, Dr Rachkov, if you'd like to.

THE WITNESS: Thank you.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Dr Rachkov.

A. Good afternoon.

Q. Can Dr Rachkov be given bundle G(A)1/1 and also G(A)6/1, please.

While those are being brought, Dr Rachkov, can you just confirm that you don't have any mobile phone or other electronic device with you in the witness box?

A. My Lady, I don't have any electronic devices with me.

Q. Dr Rachkov, if you take bundle G(A)1 and you go to tab 1, you should see a document headed "Fourth Expert

Report of Ilia Vitalievich Rachkov", do you see that G(A)1/1.01/1?

A. Yes, my Lady, I do see that.

Q. If you go to the end of that tab, it's at page 108 G(A)1/1.01/108. It's right at the end of the tab. Can you confirm that that is your signature?

A. Yes, my Lady, I confirm this is my signature.

Q. And that this is your fourth report in these proceedings?

A. I confirm.

Q. Thank you. And can you just go over to the next tab G(A)1/1.02/109, you should see a document headed "Fifth Expert Report of Ilia Vitalievich Rachkov", do you have that?

A. Yes, my Lady, I do.

MRS JUSTICE GLOSTER: You don't have to call me "my Lady" every answer.

MR RABINOWITZ: And if you go to the end of that tab, page 177 G(A)1/1.02/177, again you should see a signature. Can you confirm that that is your signature?

A. Yes, I do.

Q. And that this is your fifth report in these proceedings?

A. Yes, this is my fifth report in these proceedings.

Q. Thank you. And then if you go over the tab, to tab 3

G(A)1/1.03/178, you should see a document headed "Sixth Expert Report of Ilia Vitalievich Rachkov"?

A. Yes, I confirm this, I see this.

Q. Thank you. And then if you go right to the end of that bundle, it's page 217 G(A)1/1.03/217, again can you confirm that that is your signature?

A. Yes, this is my signature.

Q. Thank you, and that this is your sixth report?

A. Yes, this is my sixth report.

Q. Thank you. Can you confirm that the contents of these reports are all true to the best of your knowledge and belief?

A. Yes, I confirm this.

Q. Thank you very much.

Now, can you take up, please, bundle G(A)6/1, which is the joint expert memorandum, do you have that G(A)6/1.01/1?

A. I do.

Q. Now, it's, as you know, a document which contains statements both of yourself and Mr Rozenberg and Professor Maggs. Can you first just go to page 41, again it's the end of the tab, on the left-hand side, can you confirm that that is your signature G(A)6/1.01/41?

A. Yes, this is my signature.

Q. Can you confirm that insofar as the joint memorandum contains or reflects statements attributable to you, that those statements are true to the best of your knowledge and belief?

A. Yes, I confirm.

MR RABINOWITZ: Thank you. Can you wait there, please, Mr Sumption is going to have some questions for you.

Cross-examination by MR SUMPTION

MR SUMPTION: Good afternoon, Dr Rachkov.

A. Good afternoon.

Q. Can you assume that it was agreed at the Dorchester Hotel in March 2000 that Mr Abramovich would legally own Rusal while Mr Berezovsky and Mr Patarkatsishvili would beneficially own part of the holding? Do you follow the assumption that I'm asking you to make?

A. I do follow.

Q. Now, you accept, as I understand it, that that would not be a valid agreement as a matter of Russian law, is that right?

A. That is right.

Q. Now, am I right in thinking that that is because, in Russian law, the ownership of property is unitary; that's to say you can't split ownership into different kinds of right?

A. What I said in my report is that the ownership cannot be split into legal and beneficial ownership --

Q. Yes.

A. -- between different persons.

Q. Very well. Even by express agreement? The concept doesn't exist, in other words?

A. Such concept does not exist in Russian law.

Q. Now, I think your evidence is that the draftsman of the Civil Code considered borrowing the concept of trusts from English law but it was deliberately decided not to do that, is that right?

A. This is correct.

Q. Now, can we just look at some special situations. First of all, is it right that an article of property can be in the common ownership of more than one person?

A. Yes, some things can be in common ownership of more than one person.

Q. If we can just establish this, and I don't think there's any dispute about it, by reference to the relevant provisions of the Code. Could you be given bundle G(A)2/1. I'd like you to turn to flag 6 here which is one of a number of places in these bundles where we find extracts from the Code. They're not the same extracts which is why we're going to have to move about a bit.

If you turn to page 131 in the bundle numbering G(A)2/1.06/131, you should find Article 244 in a parallel Russian and English text. Sub-article 1 says:

"Property that is owned by two or more persons belongs to them by right of common ownership."

And that's the proposition that you confirmed a moment ago. That's right, isn't it?

A. Yes, that's right.

Q. I think the rest of the article explains that common ownership may be of two kinds. There is joint ownership and what is called share ownership in the English.

A. Yes, this is correct.

Q. Now, I'm anxious to labour this point slightly because we use very similar terms in English to describe something different. So in order to avoid confusion, am I right in thinking that joint ownership -- and this I think is the same in English and Russian law -- refers to the ownership of an asset by two or more persons in undivided shares?

A. I'm afraid I can only refer to what Russian Civil Code says.

Q. Yes. If you have two joint owners of an asset, is the position that they jointly own the whole of that asset? It's not divided into so much belonging to one person

and so much belonging to the other; is that right?

A. Yes, that is correct. For instance, the husband and the wife have such type of ownership.

Q. Yes, and each of them owns the whole of the asset jointly?

A. Yes, unless they decided to divide it.

Q. Now, the other sort of common ownership which is referred to in Article 244, sub-article 2, is called share ownership. It may be that a less confusing English term would be ownership of a share, and that refers to the fact that property may be in common ownership with a definition of the share of each of its owners in the right of ownership. I'm reading from the English translation of Article 244.2.

Now, is it right then that if you have share ownership, or ownership of a share, in contradistinction to the case of joint ownership, this is a case where two or more people own an asset with each of them owning a defined proportion of that asset; that is correct?

A. That is in principle correct.

Q. Now, that of course is not splitting ownership into different kinds of right, is it? Because in either case each owner will have the same kind of right, is that correct?

A. Can you please specify your question?

Q. Well, common ownership in either of its two forms is not an example of splitting ownership into different kinds of ownership right, is it? Because in each case common owners have the same kind of right over the asset, is that correct?

A. That is correct.

Q. Now, can we look at a second special situation. Is it right that an owner of property can enter into a contract of entrusted management, which I think is a technical term, at least that's the way it's translated into English, the effect of which is that he entrusts the property in question to the management of another person. Is that correct?

A. The question -- I need to specify your question, or please give me the example whether you refer to the joint ownership or to the shared ownership?

Q. Well, I'm not now talking about common ownership. I've moved on to a different topic I want to ask you about which is concerned with a kind of contract which is referred to in English as a contract of entrusted management. Now, is that an expression that you are familiar with?

A. No, I am not familiar with that expression.

Q. Right.

A. I am familiar with the expression which is used in

Russian law for an appropriate contract on entrusted management.

Q. Well, let me see if I can refer you to the relevant provision of the Code. Would you look at Article 101.2 of the Code which I think you'll find in the same flag. If you look at Article 1012, sub-article 1, this is under the heading "The Contract of Entrusted Management of Property", do you see?

A. Yes.

Q. I'm for obvious reasons using the English term and it may not be an expression that you would use --

MRS JUSTICE GLOSTER: Would you give me the page, please, Mr Sumption?

MR SUMPTION: It's at page 165 G(A)2/1.06/165.

When I refer to a contract of entrusted management, what I'm talking about is the sort of contract that is mentioned in the heading of Article 1012. There is, no doubt, a more exact Russian term in the parallel column.

Now, is that a kind of contract by which the owner of property entrusts that property to the management of another person?

A. Yes, this is such a contract.

Q. Now, under such a contract, am I right in thinking that the manager has no ownership interest at all? He is simply an agent for the purpose of managing it?

A. That is correct.

Q. Now, if I can turn to a third particular situation, you can also, as I understand it, have a custody or depo agreement for shares in companies with a professional securities depository, is that right?

A. Yes, this is right.

Q. Is it a feature of that contract that the depository exercises the rights of the owner but he does so only as the owner's agent and subject to the owner's instructions?

A. In general it is possible, but it depends on what exactly is said in the contract between the owner and the service provider, who is the holder of the depo account.

Q. But would you accept that it is a feature of custody or depo agreements that the depository or custodian will not have any ownership interest in the shares, he is simply performing services in relation to them to the true owner?

A. This is correct.

Q. So that none of the three special situations which I've identified infringe the basic principle that ownership rights in property can't be split into different kinds of ownership, would you agree?

A. Maybe you can specify once again what you wanted me to

answer.

Q. Am I right in thinking that none of the three special situations that I've asked you about, namely common ownership, contract of entrusted management and custody or depo agreements, none of those three arrangements are inconsistent with the basic rule of Russian law that the ownership of property can't be split into a legal and a beneficial interest?

A. Yes, I think none of these legal structures contradicts Russian law.

Q. Yes. Well now, as I understand it, although two people cannot contract to split ownership into, for example, a legal and a beneficial interest, you say that an asset owner can contract with another person to give him a contractual benefit which is derived from ownership, for example I promise to pay you half the dividends that I receive from my shares in the XYZ company; that is your position, isn't it?

A. That is my position, that such result can be achieved through a contract.

Q. Now, is that on the basis that, if you enter into a contract of that kind, you are not agreeing to give the other party to the contract any ownership interests in the shares, it's a purely personal obligation; is that right?

A. Yes, this is a contractual obligation. It is not a right in rem.

Q. Right. Now, can I turn, please, to the question of rights in registered shares in a Russian company. Do you agree that shares in Russian joint stock companies are issued in what is called non-documentary form?

A. Yes, this is correct. Starting from 2001, all shares in Russian joint stock companies must be issued in non-documentary form.

Q. Is it right that there were non-documentary shares before 2001?

A. Before 2001 there were non-documentary or documentary form, depending on what the joint stock company prefers.

Q. So is it right then that the change that occurred in 2001 was that whereas previously a joint stock company could choose either to have documentary or non-documentary shares, after 2001 they had to be non-documentary? Is that correct?

A. Yes, this is correct.

Q. Can I next just ask you to confirm that Sibneft was an open joint stock company, wasn't it?

A. To the best of my knowledge, it was.

Q. Now, would you accept that the rights of shareholders in a Russian company are governed primarily by the Securities Law of 1996 and the charter of the company?

A. Yes, this is correct, plus regulations enacted by the Federal Commission of Securities Market or, as it is called now, the Federal Service for Financial Markets.

Q. Yes. Now could you please be given bundle G(A)4/6. I'd like you to turn to flag 85 in this bundle, which is the 1996 Securities Law G(A)4/6.85/208. Now, Article 2, which is the first article in the extract, provides:

"Non-documentary form of securities is a form of securities in which the titled holder is to be established on the basis of the record in the system of the register of holders of securities or in the event of accounting the rights to securities and the depository -- by records in the depo account."

Now, leaving aside depo accounts, which you've given some evidence about, do you accept that title to non-documentary shares is registered in a register kept either by the company itself or by a professional registrar?

A. Yes, I agree, with one small explanation, that if the number of shareholders in a company exceeds 50 then the register must be held by an independent external registrar and not by the company itself.

Q. I understand. But in either case, title to non-documentary shares is registered in the relevant register?

A. Yes.

Q. Would you agree that a company is not required to recognise the title of anybody who claims to hold shares but isn't registered?

A. The company is not entitled to do so if the company is provided with all the documents which evidence that the person is the owner or is entitled to be registered in the register of shareholders.

Q. Yes. Well, I will come to that. But if a shareholder, let us call him X, is registered in the register of shares the company is entitled to regard X and no one else as the owner. But if Y comes along and says "Here is a transfer executed in my favour by X, you must register me now as the shareholder", the company may be obliged to do that, is that correct?

A. Yes, this is correct.

Q. Now, would you agree that a person has title to shares only from the moment that he is registered as the shareholder in the company's share register?

A. The registration is only a prima facie argument to say that a person is an owner. Therefore it really depends on the case we are speaking about. For sure, if the person is registered in the shareholder register, prima facie, as long as nothing to the contrary is evidenced, such person is the owner.

Q. Right. But if somebody else is going to assert, as against a company, title to the shares he has got to demonstrate that he has a better right to the shares than the person who is registered, is that correct?

A. What do you mean by "better right"? Can you explain, please?

Q. Well, suppose that you have a parcel of 100 shares which are registered in the name of X. Now, Y can, as I understand your evidence, come along and say "I ought to be registered as the owner of these shares because, for example, X has sold them to me and here is the evidence". Is that correct?

A. Yes, if there is a contract between these two persons, the previous and the current shareholder, and this contract can be enforced, that's what the new shareholder may request.

Q. Yes. So what he has to produce is something which demonstrates that X, the registered shareholder, has transferred or surrendered his interests in those shares to Y, is that correct?

A. Yes, there is a very clear indication in Russian law which type of documents must be provided to the holder of the register of shareholders to effectuate such transfer.

Q. Yes. And can you tell us what those documents are,

please?

A. It depends on the specific circumstances of the case but, in general, leaving aside the circumstances of this particular case, there should be a contract between the seller and the purchaser; there should be a transfer order, in Russian called "peredatochnoye rasporyazhenie"; there should be an evidence that the payment occurred, otherwise the shares are deemed pledged. Based on these documents, the registrar effectuates the operation.

Q. And those are all -- the contract that you refer to is a contract in writing?

A. It is usually a contract in writing but, as I said, everything depends on the case by case situation.

If I take another situation, we have a husband who is registered in the register of shareholders as the owner of the shares, but later on, in the course of the divorce, it appears that his wife was also entitled to be registered, then the wife can request the separation of the property and be registered without any contract.

Q. Yes. Well, there are no doubt special situations like that one where presumably what you produce is the order of the court which directs that the wife is to have that right, is that correct?

A. Yes.

MRS JUSTICE GLOSTER: I mean, she couldn't just turn up at a shareholders meeting and vote without getting herself on the register?

A. Correct. She cannot approach the general meeting of shareholders because nobody knows whether she is the wife and how shall this be evidenced.

MR SUMPTION: So there are various situations in which you can call upon the company to register you as a shareholder, but it is the register that is conclusive of the identity of the person who has the existing interest in the shares, is it not?

A. No, it is not. In Russian law, we distinguish between constitutive registration which is, for instance, so-called state registration, and the registration which is just the completion of the whole procedure. So in Russian law there can well be cases where there is a contract but for some reason the person is not entered in the register of shareholders, for instance because the seller prevents the purchaser from being registered because the seller does not deliver appropriate documents.

Q. Well, in that situation, suppose that the person who claims that there is a contract to transfer the shares to him turns up without previously getting himself registered as the shareholder at the general meeting and

tries to vote. Now, the company will be under no obligation, will it, to recognise his right to vote?

A. Yes. The company can rely on the entries in the register of shareholders.

Q. Indeed. And if you look back at Article 2 G(A)4/6.85/208, that is providing, is it not, that where you have non-documentary securities:

"... the titled holder is to be established on the basis of the record in the system of the register of the holders of the securities ..."

Now, that is a mandatory provision, isn't it? The title of a shareholder must be established on the basis of an entry in the register, is that not right?

A. I cannot deny what the literal wording of the law is but, on the basis of the Russian court practice, I can say that the cases when the person is entitled to be registered, but is not registered for several reasons, are numerous. And, in this event, on a case by case basis, Russian court or another competent court must decide whether such person must be entered into the register.

There were cases which are also numerous in Russia that registrars were so-called pocket registrars. For instance, a major Russian group of companies creates, through a chain of companies, quasi-independent

registrars which run the registers of shareholders of this company, and there were cases when registrars were engaged in corporate wars and conflicts and where they did not comply with the requirements of Russian law.

That's why I think it is to simplify things if we simply say or repeat the wording of Article 2.

Q. Well the wording of Article 2, as I think you've acknowledged, appears to be mandatory. That's what the language says?

A. It is mandatory for the registrars to register the holders of securities if they provide the registrars with the documents which are, in terms of their composition, their form and their contents, in line with the requirements of Russian law.

Q. Well, what is said to be mandatory, I would suggest, in Article 2, is that the title holder is to be established on the basis of the record and the register, that's the mandatory principle, isn't it?

A. I disagree.

Q. Well, I quite understand and do not for one moment dispute that there may be many circumstances in which a person is entitled to be registered. But until he is registered the company is entitled to disregard his claim, isn't that right? The company is not entitled to treat him as the owner of the shares until he is

registered even though he may have a right to be registered?

A. That is correct.

Q. And the register is therefore conclusive unless and until a court decides otherwise. That is ultimately the position, isn't it?

A. As I said before, it is not the position. We distinguish between constitutive operation of the law where the registration triggers the right of ownership, and the superficial, if you want, or external situation that the right is registered.

Q. Would you agree that when a person acquires or disposes of shares in a company, what he is acquiring or disposing of is an intangible legal right against that company?

A. I cannot follow what intangible means. I can only say that, indeed, the property which was disposed of are obligatory rights.

Q. Against the company?

A. Against the company.

Q. Now, if the company has no legal obligation to recognise his title, because he isn't yet registered, then there is nothing for that person to acquire or dispose of, is there?

A. Yes, you can say this way.

Q. Now, in English law, which recognises a difference between legal and beneficial ownership, a person who is not registered as a shareholder may nevertheless be entitled to require the registered shareholder to treat him as the real owner, but that's not a solution that Russian law acknowledges, is it? Because Russian law doesn't allow a distinction between legal and beneficial ownership?

A. No, I don't think so. I think the Russian law permits to achieve exactly the same economic result as the English law delivers, as you described it.

Q. But what it will not achieve is a situation in which any form of ownership is vested in the unregistered person. He may have a personal contractual right according to your evidence but not a right in rem; I think you confirmed that earlier?

A. That is correct.

MRS JUSTICE GLOSTER: So if I buy shares off you, and you remain the registered shareholder, and I've paid the price for the shares, can I contractually require you to vote in accordance with my directions?

A. Yes, and there is a direct indication to that effect in the federal law on joint stock companies.

MRS JUSTICE GLOSTER: Right.

A. You can request me to deliver you a power of attorney or

to vote in accordance with your instructions, my Lady.

MR SUMPTION: In the case of a power of attorney, you would be exercising somebody else's right to vote as an agent?

A. Yes.

Q. Do you agree?

A. Yes.

Q. And the same would be true if you were voting on the directions of somebody else. You would be exercising his voting rights but, by contract, you would be doing so according to his wishes, is that right?

A. Yes, and there is nothing surprising in it. Imagine a shareholder is holding shares, he knows that the annual general meeting of shareholders will take place soon, he knows what the recommendations of the supervisory board of the Russian company, in terms of dividends, are. He knows that the recommendation is not to pay the dividends. Still he needs money. He sells his shares to a purchaser, and the purchaser does not have enough time to get registered in the register of shareholders. In Russian law we have a deadline by which the list of persons entitled to vote in the general meeting of shareholders must be compiled.

So that's how it works in practice.

Q. Yes, and in that situation the registered shareholder is still treated, as against the company, as being the

owner, but he has contracted to exercise his vote on the directions of the person who has bought the shares, is that right?

A. Not necessarily. It depends on whether or not the seller is still registered in the register of shareholders or, although the purchaser is already registered in the register of shareholders, but is not included in the list of those who are entitled to vote in the general meeting of shareholders.

Q. My question assumed, and I'm sorry I didn't make this clear, my question assumed that the seller was still registered as the owner. On that footing, is my proposition right?

A. And what exactly is your proposition?

Q. What I asked you was: in that situation, ie the situation where there hadn't been time to complete the formalities, the registered shareholder is still treated as the owner, but he is contracted to exercise his vote on the directions of the person who has bought the shares.

Now, I was asking you that on the footing that the seller is still the registered owner.

A. Yes, the seller is still the registered owner.

Q. Now, would you accept that it follows from the provisions of the Securities Law about registered title

to non-documentary shares that if two people have common ownership of shares in a company then they must all be registered, they must both be registered as shareholders?

A. In an ideal world, yes. In the real world, no.

Q. If they both want their rights as common owners to be recognised by the company that's what they've got to do, isn't it?

A. Yes, but -- unless they agree it among themselves that they do not want to show that they are owners, and they agree to split the dividends obtained by one of them between themselves without sharing it to the public. And this is exactly what happens between husband and wife as well.

Q. In that event, the company will have no obligation to recognise the person who is not on the register, will it?

A. No, it will not.

MRS JUSTICE GLOSTER: And in those circumstances, does the person who is not on the register have a right in rem or just a personal right?

A. Just a personal, ie a contractual, right. And such situations are very widespread. For instance, many foreign companies are not registered in the registers of shareholders of Russian companies but they entrust

professional trustees to be registered in registers of Russian companies as the owners, but still they have contractual rights against these legal owners who are registered --

MRS JUSTICE GLOSTER: What happens if the professional trustee becomes insolvent? Where is the ownership of the share in that circumstance?

A. That's a big problem from the point of view of Russian law. There were cases where, for instance, Bank of New York was registered as the owner of shares in Gazprom, and Bank of New York issued on these shares depository receipts in the United States, and a claimant in Russia, being an individual, filed a claim against Bank of New York with one of the courts of common jurisdiction in Moscow claiming that Bank of New York owed something to that claimant, and actually the shares in Gazprom owned legally by Bank of New York were seized.

So such situations happen and --

MR SUMPTION: When you say seized, do you mean seized in execution of the claimant's debt?

A. Arrested. Well, not yet. It's just -- all operations with these shares were frozen, and the Bank of New York was prohibited from doing anything with these shares, to dispose of them. So its rights as the owner were

limited to only what was absolutely necessary, so to say, to receive dividends for instance but not to vote for instance.

Q. That result was the consequence, was it, of the fact that the only person recognised as having ownership rights was the registered shareholder and no one else had rights in rem?

A. Yes. That's correct.

Q. Now, I wonder if I could ask you to turn in the same bundle to flag 91, which is a decision of the Supreme Arbitrazh Court of the Russian Federation in 2011 about another form of registered title namely title to property, land.

Now, one of the issues considered in this case, as I understand the judgment, was the moment at which a real right came into being, and this case arose out of a partnership agreement. And I think you will get the essence of the issue from paragraph 7 on page 248 G(A)4/6.91/248, and in particular over the page at page 249 G(A)4/6.91/249.

This is dealing with a situation where you have common ownership, in this case arising out of a partnership agreement, but the property, the title to the property has not been registered as being in the common ownership of the partners. You can see that from

the first full paragraph on page 249.

Obviously, Dr Rachkov, if I'm overlooking some other relevant part of this judgment you must point that out to me.

A. Maybe you can refer to specific number, is it number 7?

Q. Well, it's part of number 7. If you look at number 7, that's where the analysis begins.

A. Mm-hm.

Q. And if you turn over to page 249 in the English translation, at the first break in the page it says:

"Therefore, if a real property has been created on a land plot that has not been registered as common ownership of the partners... then the ownership right to the newly created... property may on the basis of... the Civil Code only belong to the partner having rights to the said land plot."

As I understand, what's being said there in the context of land is that the land only belongs to the partner whose title has been registered, notwithstanding that there exists a partnership agreement between him and someone else under which this is intended to be common property.

Is that what it is saying?

A. Maybe I can give my own explanation of how I understand this paragraph?

Q. Yes, by all means.

A. It looks like there was a simple partnership agreement where one of the partners was the owner of a plot of land. He failed to transfer this plot of land to the common ownership of the partners. The building was erected on this plot of land, and because Russian law requires in principle that the ownership to land and the house are not split, therefore, the owner of this house is that partner.

Q. If you look at the next paragraph, you will see that:

"If, despite the terms of an agreement [and that's a reference I think to the partnership agreement], a partner that is obligated to contribute leasehold rights to a land plot to the agreement, or to transfer the land plot into the common ownership ... refuses to do so, other parties to such simple partnership agreements may apply to a court demanding enforcement of the said agreement as provided for by... Article 551 of the Civil Code. Courts shall qualify partners' claims worded as claims to recognise ownership rights to a share in the created real property, the creation of which was [the] common goal..."

The next paragraph says:

"In all such cases, [the] courts must proceed from the fact that the ownership right of a partner making

a relevant claim shall arise not earlier than the moment of state registration of such right on the basis of a judicial act satisfying such claim..."

Now, as I understand what is being said here, it is that the law is that if you have a right, for example, under a partnership agreement to be registered as the owner of some land, you are not treated as having any right in rem until the moment when that registration occurs. And I think that's very consistent with your previous analysis.

Have I correctly understood what the judgment is saying?

A. I think you did, and I said before in this court that real estate and transactions with real estate are subject to so-called state registration, whereas shares are subject to private registration, and the state registration is indeed constitutive. You cannot say you are an owner of real estate unless you are registered in the register of real estate by the state authority, not by a private registrar.

Q. Yes. Well, I understand that the person who keeps the relevant register is the state in the case of land, and a corporate or professional registrar in the case of companies. But the common factor in both situations, surely, is this, which is that there is a law which

provides that registration is to be conclusive. In the case of securities, it was Article 2 of the Securities Law of 1996, would you accept that?

A. No.

Q. In spite of the terms of Article 2 of the Law of 1996?

A. Yes.

Q. And in spite of your own evidence that, pending registration, there is no right in rem?

A. I would distinguish between the terms "a right in rem" and the question whether the registration is conclusive or, as I say, constitutive or not. The registration of real estate is constitutive. The right of the owner emerges only with the state registration in the register of real estate.

Q. Dr Rachkov, if you were not the registered owner of shares but claimed to have a legal right to become the registered owner of shares, a situation that we have been discussing over the last half hour or so.

You would ultimately have to produce evidence satisfactory to a Russian court to establish your right, wouldn't you?

A. Yes.

Q. And the evidence satisfactory to a Russian court would, provided that it was a transaction exceeding the relevant value threshold, be written evidence of a right

to those shares, wouldn't it? You would have to establish your right by written evidence in a Russian court.

A. There is no requirement that you must evidence your right to shares only by written evidence. All other types of evidence are taken into account.

Q. Well, we'll come in due course to Article 161 of the Civil Code, but do you agree that if you were claiming a right to be registered as a shareholder by virtue of a contract, that contract would be governed by Article 161 of the Civil Code provided that it exceeded the minimum value limit specified in that Article; is that correct?

A. If you refer to the contract, yes, there should be a contract --

Q. Yes.

A. -- which can be --

Q. Ie, a written contract?

A. The question is whether there must be a written contract or that it is better that there is a written contract. I think that it is better that there is a written contract, but you can -- actually the triggering event to effectuate the registration is not the written contract, it's the transfer order, and a transfer order is a unilateral act which is done by the seller and not

a contract.

Q. But to establish your right to make the seller give you a transfer order, you may have to demonstrate that he has contracted to give you or sell you the shares?

A. No.

Q. Well, let us suppose that your right to be registered as the owner of shares is a contractual right, it derives from a contract that you've made with the person who is currently the registered owner. Can we suppose that for a moment. Now, if on that basis you say you are entitled to be registered, then you ask the seller to give you a transfer, and if he says no, you go with your contract to the Russian court, do you not?

A. Yes.

Q. And the Russian court, provided that the value limits exceed the minimum specified in Article 161, will, among other things, apply Article 161 to that contract, will they not?

A. Yes.

Q. I'll come back to Article 161 when I come to deal with that.

Can I, before getting there, ask you to help us on the application of some of the principles you've been giving evidence about to other agreements in issue in this case.

Now, you've acknowledged that the alleged Dorchester House (sic) agreement, which involves a split between legal and beneficial interests, would not be regarded as a valid agreement in Russian law. Could I please ask you to be given bundle K2 and turn to flag 3 at page 8 K2/03/8.

What you're looking at now is the original particulars of claim by which this action was begun. What I want you to look at is page 8, a heading two-thirds of the way down the page, "The claim in relation to Sibneft".

Now, you'll see that in this paragraph Mr Berezovsky's lawyers say:

"At that time [and that's referring to May 2001], the Defendant [Mr Abramovich], through corporate nominees, was the beneficial owner of 43% of the shares in an oil company... Sibneft. In addition, the Defendant, through corporate nominees, was the legal owner of a further 43% of the shares held in Sibneft. Those further shares were held by the Defendant as nominee for and on trust for the Claimant and Mr Patarkatsishvili, each of whom was individually the beneficial owner of 50% of that 43% shareholding."

Now, this situation, the situation that is described in the two sentences which begin "In addition, the

Defendant", that is, as I understand your evidence, also a situation which is not conceptually possible in Russian law? Do you agree?

A. I agree.

Q. Now, could you please turn to the next flag, flag 4, which is the next edition of the particulars of claim served by Mr Berezovsky's lawyers.

Paragraph 36 on page 26 K2/04/26 alleges:

"Initially, Mr Berezovsky and Mr Patarkatsishvili legally owned or controlled companies which controlled and legally owned their proportions of the Sibneft shares. However, as Mr Berezovsky became more heavily involved in politics and while Mr Patarkatsishvili continued to manage ORT, it was decided and agreed between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich that Mr Berezovsky and Mr Patarkatsishvili would be distanced from the... business. Mr Abramovich proposed that all the shares held by Mr Berezovsky and Mr Patarkatsishvili should be transferred legally to him or to entities under his ownership or control."

Then in the next paragraph K2/04/27, it is said that it was orally agreed between the three of them by 1996 that:

"Such a transfer would take place."

And, 2:

"Mr Berezovsky and Mr Patarkatsishvili would continue beneficially to own the shares so transferred, which would be held on trust for them by Mr Abramovich."

I think it follows from your evidence that that also is a situation which is not conceptually possible in Russian law?

A. I don't know. So maybe some other than Russian companies are referred to?

Q. No, this is Sibneft. This is Sibneft.

A. Yes, I understand, but what is the chain of control between each of these individuals and Sibneft? Were there any offshore, ie non-Russian companies?

Q. What is being said here is that the shares in Sibneft -- just assume what is being said here is that the shares in Sibneft were to be transferred legally -- I'm reading from the top of page 27 of the bundle numbering K2/04/27 -- to Mr Abramovich "or to entities under his ownership or control". These are shares in a Russian company. And that it was agreed that Mr Berezovsky and Mr Patarkatsishvili, see 37(2):

"... would continue beneficially to own the shares so transferred [assume that's shares in Sibneft], which would be held on trust for them by Mr Abramovich."

I think it must follow from your evidence to date that that is also a situation which conceptually Russian

law does not countenance?

A. I mean, I can read only what is actually said here, I don't see any reference to, or any contradiction in what is said here and what Russian law says. It might well be that, as I said, there was a long chain of companies, not necessarily Russian ones, between each of these individuals and Sibneft, which I don't know, whereas -- and this may say to me that each of Mr Berezovsky and Patarkatsishvili assumed the obligation to make sure that the shares in companies which control directly or indirectly their shares in Sibneft are transferred under Mr Abramovich's control. It can be both.

Q. I quite understand your point, that it's perfectly possible in Russian law to have a trust of a non-Russian asset, a share in a BVI company, for example. That's not what I'm asking -- I think that's the sort of situation you have in mind and the answer you've just given, isn't it?

A. No. It can be well that the owner of Sibneft shares remained the same throughout all these years, but the shares in that owner belonged to Mr Berezovsky and Mr Patarkatsishvili before and were transferred under Mr Abramovich's control later on. This is a widespread situation in Russian economy.

Q. Just assume, Dr Rachkov, that under a contract governed by Russian law it is agreed that shares in a Russian company are to be legally transferred to Mr Abramovich but on the basis that they will be held in trust by Mr Abramovich for Mr Berezovsky and Mr Patarkatsishvili. Just assume that that is what these paragraphs mean.

On that assumption, which I'm not asking you to confirm because it's quite unfair to ask you to do that, on that assumption, would you agree that that's a situation for which Russian law does not make provision because it's a trust?

A. Well, Russian law is very flexible. If -- the Russian law does not know the word "trust" as such, therefore we need to figure out what exactly the parties may have meant. And if the literal wording of the contract does not allow us to derive the intention of the parties we shall look more intensively on the specific performance of the contract later on, on the correspondence which may or may not have been exchanged between the parties, on the payment orders, if any, on explanations of the parties.

Q. Well, I'll come to the whole subject of explanations, but I thought that one thing we'd established right at the outset of your evidence this afternoon, Dr Rachkov, is that the one thing you can't do in Russian law, even

by agreement, is to create legal and beneficial interests, separate legal and beneficial interests in the same property; you agree with that, don't you? You did before.

A. Yes, I agree.

MRS JUSTICE GLOSTER: As I understand it, what you're saying is: if I agree with you that I will hold shares in a Russian company for you, that can be done through a holding company offshore, but not through just holding those shares in the Russian company on trust for the other person; is that what you're saying?

A. I think the situation is very widespread where whilst individuals do not hold shares in Russian companies directly, moreover legally speaking there is nothing which connects them with these companies. There are only trust agreements with some offshore companies, which in turn hold shares in some intermediate sub-holding companies, which in turn hold shares in Russian companies.

MRS JUSTICE GLOSTER: Well, the question that Mr Sumption is putting to you is: forget the structure whereby you've got an offshore company on top of the Russian company, just look at the situation in relation to shares in the Russian company. It couldn't be done, a warehousing type operation of this sort; what is being put to you is

that it couldn't be done directly in relation to shares in a Russian company?

A. I'm afraid I need some further explanation from Mr Sumption on this.

MR SUMPTION: Well, I'm simply applying the logic of the answer that you gave to the very first question that I asked you, Dr Rachkov, which involved drawing your attention to the Dorchester Hotel agreement as alleged by Mr Berezovsky, under which Mr Berezovsky says that there was an agreement under which Mr Abramovich would hold shares in trust for him, for Mr Berezovsky, and Mr Berezovsky would have a beneficial interest in those shares.

You confirmed, it's in your report, that that was conceptually not possible in Russian law. Now, this pleading, which is the original form or an early form of Mr Berezovsky's alleged 1996 agreement, is subject to exactly the same objection, isn't it? It's an allegation that there was an agreement under which Mr Abramovich would legally hold shares but in trust for Mr Berezovsky and Mr Patarkatsishvili as beneficial owners.

Now, if that is the allegation, then surely exactly the same applies to this agreement as applies in your evidence to the Dorchester House (sic) agreement, isn't

that right?

A. As I understood the documents I was provided with, ie the particulars of claim, as they developed over time, there is a difference between Dorchester agreement and 1996 agreement which is actually --

Q. What you are referring to, Dr Rachkov, is the manner in which Mr Berezovsky amended his case about the 1996 agreement in response to your original report at the time of the striking out application when you pointed out the difficulties that Russian law put in the way of the agreement that he had originally alleged.

Now, I am asking you about this allegation, and this allegation, on the footing that it refers to Sibneft and not to an offshore company, is conceptually just as impossible in Russian law as the Dorchester Hotel agreement alleged by Mr Berezovsky, isn't it?

A. As I said before, since we don't have any written contract in front of us it is difficult for me to say what the parties could have meant when using such words as "trust" and the like.

Indeed, if things are as put by Mr Sumption, it looks like such an agreement wouldn't make sense under Russian law. Under Russian law, you can't split the beneficial and the legal ownership.

MR SUMPTION: Thank you.

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR SUMPTION: My Lady, yes.

MRS JUSTICE GLOSTER: Right.

Don't talk to anybody about your evidence or the case.

Ten minutes.

(3.30 pm)

(A short break)

(3.45 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Dr Rachkov, I want to turn to the so-called 1995 agreement which you have categorised as a joint activity agreement or simple partnership agreement. I think it's common ground that those are two expressions for the same thing, aren't they; joint activity agreement and simple partnership agreement are the same thing?

A. Yes, I prefer to use the term simple partnership contract.

Q. Very well.

Now, when we ask ourselves whether a simple partnership agreement was paid in 1995, can I just confirm with you -- and I don't think there's any dispute about this -- what the legal source material is that is relevant.

Am I right in thinking that part 1 of the Civil Code was in force from 1 January 1995 but part 2 only from 1 January 1996?

A. Yes, this is correct.

Q. Part 1 means Articles 1 to 453?

A. Excuse me, I need to correct myself. You said from 1 January 1996?

Q. Sorry, 1 March. You're the witness, Dr Rachkov. I'm told from my right I should have said 1 March.

A. Excuse me, 1 March 1996.

Q. I'm grateful.

Now, part 1 means Articles 1 to 453, doesn't it?

A. Yes.

Q. And the rest is all part 2?

A. There are more, there are part 3, part 4, but part 1 is 1 through to 453.

Q. Okay. Well now, in relation to an agreement said to have been made in 1995 then, can I just list the legal sources that seem to be relevant. First of all, part 1 of the Civil Code is relevant, is that right?

A. That is correct.

Q. Secondly, the Fundamentals of the Civil Code of 1991 is relevant so far as the matter is not dealt with in part 1 of the Civil Code, is that correct?

A. The Fundamentals of the Civil Legislation of the Union

of Socialist Soviet Republics, yes.

Q. Yes. That's a 1991 document, isn't it?

A. This is the document of 31 May 1991.

Q. Yes, and was that a sort of provisional Civil Code which was in due course intended to be superseded by parts 1, 2 and 3 and so on?

A. Not really. This was the document which was elaborated by the Soviet Union parliament, and this was a kind of umbrella law for civil codes which were to be elaborated by 15 Soviet republics.

Q. Right. But as I understand it, if some aspect of a legal right was not dealt with in part 1 of the Civil Code which came into force in 1995, one would refer to the Fundamentals of 1991 to see if you could get an answer from that, is that correct?

A. That is correct. Plus the old Civil Code of the Russian Soviet Federative Socialist Republic of 1964 applied to the extent it did not contradict the constitution of the Russian Federation and other laws including Fundamentals of 1991 and the Civil Code of 1994.

Q. I understand. So, so far as some matter was not dealt with either by part 1 of the Civil Code or by the Fundamentals, and was not contradicted by the constitution or another law, you could refer to the old Civil Code of 1964?

A. Yes. To the extent it did not contradict the laws, yes.

Q. Yes. Now, am I right therefore in thinking that part 2 of the Civil Code is irrelevant to an agreement said to have been made in 1995?

A. Yes, this is correct.

Q. Now, is it right that in 1995 the general definition of a simple partnership agreement was to be found in Article 122 of the Fundamentals?

A. Yes, this is correct.

Q. Can we have a look at that? It's in bundle G(A)2/1, tab 5 G(A)2/1.05/96.

A. Can I ask someone to bring me the folder?

Q. This is extracts from the Fundamentals first in Russian and then in English starting at page 96 in the English. Article 122 is at page 96, and that's the article which I referred to a moment ago in my question, and you in your answer, is it not, the general definition that was in force in '95?

A. Yes.

Q. As I understand it, this provision was later superseded, but after 1995, by Article 1041 of part 2 of the Civil Code, is that correct?

A. Yes, this is correct.

Q. Now, is it right that the classic business partnership as described in, for example, Article 122 of the

Fundamentals is an arrangement under which people combine their capital or their business skills to achieve some common business objective?

A. It's not 100 per cent the literal wording. The literal wording is that property and efforts are combined, yes.

Q. The Code, if we look at Article 122 of the Fundamentals, deals with the position of people who act jointly, and I quote, "without the formation of a legal person", ie without the formation of an artificial legal person such as a company, is that right?

A. Yes, this is correct.

Q. Would you agree that the alleged agreement of 1995 in this case was an agreement which did involve the formation and exploitation of a company, Sibneft, which would be owned and controlled according to Mr Berezovsky's allegation by Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili; that's the alleged agreement made in 1995, or part of it?

A. I cannot subscribe to that. I understand the particulars of claim in a different way to that.

Q. Well, I'm not going to argue with you about what the particulars of claim say, Dr Rachkov, because that will be a matter for my Lady in due course.

Would you agree that an arrangement to operate a business through a joint stock company is governed not

by the law relating to simple partnership agreements but by company law?

A. No, I do not agree. The company law governs the activity of the company itself, it governs to some extent the relations between the company and its shareholders, but it does not govern the relations between the shareholders.

Q. In some respects surely it does, because company law, for example, would determine what constituted a majority decision at a shareholders meeting, wouldn't it?

A. Yes, here I agree.

Q. If we look back at Article 122 of the Fundamentals:

"Joint activity without formation of a legal person may be carried out on the basis of a contract between the participants in such [an] activity."

Now, that's a reference to a simple partnership agreement, isn't it?

A. Yes.

Q. That excludes, does it not, from the scope of simple partnership agreements, cases in which parties agree to join together to control and invest in the company?

A. What is your question, Mr Sumption, which I need to answer?

Q. What I'm suggesting to you, Dr Rachkov, is that what Article 122 is saying is that simple partnership

agreements do not include cases where the parties have come together to form and exploit a business through a company. Would you not agree with that?

A. I do not agree with that. There is abundant Russian court practice which says that agreements on the formation of legal entities and, more specifically, joint stock companies and limited liability companies are simple partnership agreements.

Q. What, that every company is a simple partnership agreement? Surely not.

A. No. Under Russian law, until recently, there was a requirement for the participants in a limited liability company to enter into a so-called foundation agreement. The foundation agreement was one of the two foundation documents, in addition to the charter, and the foundation agreement is an example of a joint activity or a simple partnership agreement. The same is true for joint stock companies.

Q. If you agree to operate an oil refining business, for example, and three people come together and agree to operate it jointly, pooling their capital and their business skills, that would be a good example of a simple partnership agreement, wouldn't it, or it could be?

A. Yes, could be.

Q. If instead of that they agree to incorporate a company which will own the refinery, and simply to participate as shareholders in that company, that's not a simple partnership agreement, is it, because of the express words of Article 122, "without formation of a legal person"?

A. No, it is not true. The Russian law says only that the simple partners should have a goal which should be lawful, it can be also an economic goal. And in your case I can imagine that the goal is to create the company, maybe also to manage it, maybe also to control, to vote in a specific manner. All this is covered by the simple partnership contract.

Q. What do the words of Article 122, "without formation of a legal person" mean? What effect do they achieve in your view?

A. There are two situations in Russian law and practice. The individuals can either engage in economic activity by creating a joint company, a joint venture, which is a legal person, or they can refrain from creating a legal entity and perform the economic activity themselves. If they do create a legal entity then the economic activity is carried out by such legal entity.

Q. Well, just looking at Article 122, "joint activity" under this article means joint activity without

formation of a legal person, doesn't it? If it doesn't mean that, then what limitation is being introduced into Article 122 by the words "without formation of a legal person"?

A. To answer your question I need to get back to the archives of the Russian Parliament.

MRS JUSTICE GLOSTER: Can I ask you this question: if you and I agree to go into business and we buy a company off the shelf, and we're 50/50 shareholders, and our relations contractually are governed by the constitution of the company, we haven't got a joint activity contract in those circumstances, have we? We've just agreed to put our business through a company, we're regulating our affairs by virtue of the memorandum of association and the articles of association of the company. You wouldn't say, would you, there was a joint activity contract, a simple partnership agreement in those circumstances, would you?

A. If we create a company, the company does not exist yet. We enter into a contract with a purpose to create the company. We enter into a so-called foundation agreement. This foundation is recognised by Russian court practice and also legal literature as a simple partnership agreement. Once the company is established, it may happen that our joint venture or joint activity

was completed by this so we are now shareholders in that company and --

MRS JUSTICE GLOSTER: And thereafter there's no joint activity agreement?

A. Well it depends on the provisions of the contract, what exactly is said there.

MRS JUSTICE GLOSTER: Okay. Say you and I don't agree to form a company but you already own a company 100 per cent and I buy in, or you sell me 50 per cent of the company, and we enter into a shareholders agreement as to how we shall vote and how we will appoint directors as between us. Is the shareholders agreement, whereby you and I contractually agree how we're going to vote directors, what transactions the company will and won't do, is that a joint activity contract?

A. It's a very good example of a joint activity agreement.

MR SUMPTION: Well, I'm puzzled by that, Dr Rachkov, because I thought this was common ground.

Would you take your fourth report, please, in bundle G(A)1/1, you may still have it in front of you, and turn to paragraph 164. This is G(A)1/1.01/57.

A. Can you repeat the number of the paragraph, please?

Q. It's bundle G(A)1/1, flag 1, page 57 in the bundle numbering.

You see, I would suggest to you that a foundation

agreement governing the creation or operation of a company is not an example of a simple partnership agreement, and I had thought that this is something that you were pointing out at paragraph 164. Would you like to look at paragraph 164 of your fourth report, have you got that?

A. Yes.

Q. What you seem to say here is that:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract."

Now, a simple partnership is not a legal entity, is it?

A. A simple partnership is not a legal entity.

Q. No. So:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract. But where they agree to act without formation of a legal entity, they make a simple partnership contract."

You quote Professors Braginsky and Vitriansky in their leading textbook on contract law where they describe the subject of a partnership contract as

follows:

"Article 276 of the 1922 Civil Code and Article 1041 of the current Civil Code ..."

Now 1041 I think you've confirmed is the current version of what was in 122 of the Fundamentals, and has the same reference to not including a legal entity, doesn't it?

A. Yes.

Q. And the citation you have in your paragraph:

"Article 276 of the 1922 Civil Code and Article 1041 of the current Civil Code confirm the characteristic features of a simple partnership contract: in the 1922 Code, the combining of contributions, and in the current Code, the combining of contributions and the fact that the joint activity is carried out without forming a legal person. The absence of either of these indicators prevents the parties' contract from being deemed to be a simple partnership contract."

Now, what that textbook extract is saying, surely, is that if you don't have a situation where there is no legal person, ie if you do have a legal person, you haven't got a simple partnership contract; isn't that what it's saying?

A. Indeed at the first glance you can come to this conclusion, but as a matter of law and practice it is

not correct.

Q. Well, the governing principles of law in Russia, as in I think all civil law countries, are to be found in the various codes, are they not? And it's the duty of the courts to apply the codes?

Now, you say "at the first glance" my interpretation of Article 122 and this textbook is correct. Is the position any different at second or third glance?

If you look at what the Code actually says, and what authoritative textbook writers have said about its meaning, you have to conclude that if the activity is carried out through a legal entity it's not a simple partnership agreement, don't you?

A. No. If the activity is carried out in order to form or to manage or to control a legal entity, for instance a limited liability company of Russian law or joint stock company of Russian law, this is a simple partnership contract.

Q. When you said that at first glance this textbook is indicating the opposite, how are we to read it at second glance?

A. Probably taking a look at the context in which these words are said.

Q. Well, I'm just looking at what appears to be a proposition of law derived from Article 1041 of the

current Civil Code, which is the equivalent of Article 122 of the Fundamentals. What's wrong with the statement of the law that we see in the textbook that you have quoted?

A. The fact that the parties to a simple partnership contract are shareholders of a legal entity which is formed as a result of such joint activity does not mean that there is no simple partnership contract. The creation of a legal entity is the result of the joint activity.

Q. So do you say that the law formulated in this extract from the textbook is wrong?

A. The textbook is not a source of the law. The textbook is only an interpretation of what the law says.

Q. Do you say that the interpretation is wrong?

A. The interpretation is contained in the context and, as I said, from the context of this textbook it follows that the authors of this textbook means exactly what I said.

Q. Are you distinguishing, Dr Rachkov, between an agreement to form a company and an agreement to operate a business owned by a company? Are you making that distinction?

A. No, not really.

Q. I see. So if two parties come together and say: we will acquire half each of an existing company that owns

a refinery and we will cause the company to operate that refinery and to make profits which we will then declare in dividends and distribute 50/50 between each of us, are you saying that's a simple partnership agreement?

A. It all depends on the details which are contained in the contract. If the parties combined their efforts, their skills, their reputation, if they acted together to achieve this goal, if this goal was lawful, if this goal was finally achieved, that is a simple partnership contract.

MRS JUSTICE GLOSTER: Okay, well, take the example Mr Sumption has just put to you, because I'm not understanding this, just take the simple example there. As I understand your evidence, you're saying that until the company has been acquired or until the company has been formed there is a joint activity agreement. But what about once the company has been acquired, so the two parties have acted together, they've acquired the company, from there on in the activity is generating the profits of the business through the company. At that stage in time is there still a joint activity agreement?

A. There can well be a joint activity agreement.

MRS JUSTICE GLOSTER: No, not whether there can well be. Is there, just in the simple example that you've been given, where parties agree together that they will

combine together to acquire a company, they acquire the company, no more agreement because they've acquired it; in those circumstances is there, going forward, a joint activity agreement?

A. Yes.

MRS JUSTICE GLOSTER: Why?

A. Because the parties combined their efforts to achieve a lawful goal, and they did so.

MRS JUSTICE GLOSTER: Even in circumstances where there's no agreement going forward governing their relations together?

A. The goal can be just acquisition of control or a certain stake in the company. It can also be acquisition of a certain stake in the company plus management of some business of the company afterwards.

MR SUMPTION: Well, Dr Rachkov --

A. Russian law is very flexible in terms of what the parties can agree on.

Q. Doctor Rachkov, I'm bound to suggest to you that this view is not consistent with Article 122 of the Fundamentals; it's not consistent with the textbook which you've quoted in your report; and it's not consistent with your own gloss in paragraphs 164 and 165 where the absence of a legal person, in all three places, is treated as a critical indication of whether

there is a joint activity agreement or not.

MRS JUSTICE GLOSTER: You're being asked about the first sentence of paragraph 164.

A. Yes.

MR SUMPTION: And the first sentence of 165.

A. The first sentence reads:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract."

As I said, if the parties intend to achieve a lawful goal, ie a goal which is not contrary to the law, and if they combine their efforts, and if they achieve this goal, this is a simple partnership agreement.

The first paragraph, or first sentence of 165 reads:

"As I have explained, if the parties' agreement does not match these characteristics, they have not concluded a partnership [agreement]."

Q. One of the characteristics you are referring to there is that the activity is carried on without forming a legal person. Isn't that right?

A. No, it is not correct.

Q. We may have to study that for ourselves.

I'd like to turn to the question of certainty. The first head which I'd like to ask you about is the

requirements for a valid agreement as to the partnership share, by which I mean the share that each party has in a simple partnership agreement if they intend to form one. That's the subject I'm going to ask you about now.

Now, I think you agree, don't you, that for a simple partnership agreement to be valid the essential terms have got to be agreed?

A. Yes.

Q. Now, I think you also agree with the other two experts that these essential terms include the predmet or subject matter of the contract, is that correct?

A. Yes.

Q. Now, your evidence is, and this is recorded in the joint memorandum, and you agree with the other experts on this, that the predmet means the obligations flowing from the contract, is that correct?

A. Yes.

Q. As I understand it, correct me if I'm wrong, the principle is that those obligations have got to be agreed with sufficient precision to enable a court to enforce the obligations in question. That's the essential test, isn't it?

A. Yes.

Q. We have seen earlier, when we looked at the question of common ownership, that it can be of two kinds: common

ownership in defined shares, or joint ownership. Do you remember we discussed that a while ago?

A. I remember.

Q. Now, is it right that in Russian law you cannot have joint ownership except in cases where specific provision is made for joint ownership by legislation?

A. Yes.

Q. And does it follow therefore that, except in cases specifically provided for by legislation, the only possible form of common ownership involves defined shares?

A. Yes.

Q. Now, I understand that you accept that there is no relevant legislation providing for joint ownership in this case?

A. I agree.

Q. And can we take it, therefore, that partnerships involve a form of common ownership characterised by defined shares?

A. Yes.

Q. Would you agree that the proportionate shares that each partner is to have in a proposed simple partnership agreement is one of the matters that has got to be agreed if that agreement is to be validly concluded?

A. Not necessarily.

Q. When you say not necessarily, one would have thought that whether you have to agree the size of each party's proportionate share is a question that should be answered either yes or no. But your answer is maybe?

A. My answer is no.

Q. Your answer is no. I see.

Now, if there is no agreement about what the partnership shares are to be, how does the court enforce the distribution of partnership profits?

A. The term which must be defined is what shall be contributed. On the basis of this term, as well as on the basis of the performance, the court is in a position to identify the shares in the joint ownership.

Q. Well, I will come to the question of looking at the contributions.

As I understand it, there are circumstances in which you can infer from the parties' contributions what the agreement as to their respective shares was. Is that correct?

A. This is correct.

Q. And that's what you're talking about, isn't it, when you talk about the contributions?

A. Yes, because, as I said, the simple partnership contract presumes that the partners combine their efforts, for instance.

Q. Well now, let me put a hypothetical case to you. Suppose that the parties intend to enter into a simple partnership agreement to operate a business but they do not reach agreement about what their respective partnership shares are to be. A year after they have begun this business, before any distributions have been made, there is an argument about what the distributed shares are to be.

Now, you say that the court in that situation would look at what they each contributed, is that right?

A. Yes.

Q. If they each contributed things of indeterminate value, such as business skills, how does the court set about doing that?

A. This is the question which should be assessed by appraisers, not by lawyers.

Q. I see. So you put a monetary value on their respective contributions, do you?

A. If these efforts do have such value, yes.

Q. I see. Does it follow from this that if you have a simple partnership agreement to acquire and exploit shares in a company, and one of the partners pays 100 per cent of the cost of acquiring those shares, he will be treated as having a 100 per cent share?

A. No, I don't think so.

Q. Why doesn't that follow from what you've just told us?

Let us suppose that you have a simple partnership agreement to acquire and exploit shares in a company, something which you, contrary to our position, say is perfectly possible. Now, if one of the partners is the only person who puts up the money and the only person who acquires the shares, then when the court comes to look at the value of their respective contributions, will it not decide that that partner is alone entitled to 100 per cent?

A. No, the court must decide what the other party contributed.

Q. Well, I'm asking you to assume they contributed nothing.

A. Then the other partner who contributed something is entitled to request that the other party contributes something which that party was obliged to contribute.

Q. Well, if they haven't reached an agreement about that, what does he ask him to contribute?

A. As I said, the contributions must be agreed upon, and on the basis of the contributions you distinguish or determine the shares which each of the partners have in their common ownership, in shared ownership.

Q. Would you look in your fourth report, please, at paragraph 167. This is under the heading which we see at page 57 of the bundle numbering, "Essential terms for

a partnership contract" G(A)1/1.01/58. Now, you quote here Professor Sukhanov, the author of a textbook who "confirms that the essential terms for a partnership contract are those that I have described above".

Above in the previous paragraph, I think you're referring to the concept of contributions, joint activity and, 4:

"... if the agreement is to be a partnership contract, it is essential that the parties should combine their contributions."

Sukhanov says:

"The essential terms of a simple partnership contract are those on:

"Joining of contributions;

"Joint activity of the partners;

"A common goal, at whose achievement these actions are directed."

You say it's quite unnecessary for the parties to have agreed in what shares they are to own the resultant common assets, is that right?

A. Yes.

Q. Now, could you please take bundle G(A)4/6.

My Lady, is your Ladyship willing to go on until 4.30?

MRS JUSTICE GLOSTER: I was going to go on until 4.30 or

a suitable break thereafter.

MR SUMPTION: I will be guided by that.

If you could just take bundle G(A)4/6 and turn to flag 63, Dr Rachkov, which is an extract from Professor Sukhanov's textbook, and the bit that you have quoted in your report is the part immediately under the heading "Terms of a simple partnership agreement" G(A)4/6.63/69. That's right, isn't it?

A. Yes.

Q. Now, if you just turn over the page G(A)4/6.63/70:

"The term on unification of the contributions must contain information about [the] type of proprietary or other benefit, comprising the contribution of a participant, as well as [the] amount and monetary evaluation of contribution with determination of share of each participant in common property."

Now, Professor Sukhanov is pointing out, isn't he, that you not only have to agree the contribution that you're going to make in property or effort but you have got to agree the amount and monetary evaluation of that contribution and to determine the share of each participant in the resultant common property. Is that not what he is saying?

A. This is what Professor Sukhanov believes.

Q. Yes. Now, Professor Sukhanov is a well-known authority

on this area, is he not?

A. He is.

Q. Yes, and you have quoted him in your report for that reason. But it's not right, is it, that Professor Sukhanov thinks that the only things that need to be agreed for a valid simple partnership agreement are the three matters which are identified in your report and in the first paragraph on page 69 G(A)4/6.63/69? Hence the paragraph I've just referred you to.

A. Yes.

Q. You agree?

A. Excuse me, with what?

Q. It is not right, is it -- if you look at the first paragraph under the heading "Terms of a simple partnership", the one that you quote in your report, it's not right that Professor Sukhanov thinks that the three things referred to here: merging of contributions, joint actions of the partners and the general purpose, are all that have to be agreed in order to make a valid simple partnership agreement. As you've just confirmed, Professor Sukhanov's view is that you must also agree the amount and monetary evaluation of the contributions and determine the share of the resultant common property?

A. I explained in one of my reports that this is a so-called "nice-to-have" provision. It is not a "must" provision because Professor Sukhanov clearly distinguishes between material terms or substantial essential terms of the simple partnership contract which are listed in an exhaustive way in the beginning of this quotation, and he does not say that the condition on the appraisal of the shares is an essential term. So therefore I disagree with your opinion.

Q. The word "must" is his word. If you look at that final paragraph in the section which has been translated here:

"The term on unification of the contributions must contain information about type of proprietary or other benefit, comprising the contribution of a participant, as well as [the] amount and monetary evaluation of [the] contribution with determination of share of each participant in common property."

All of that is mandatory in Professor Sukhanov's view, isn't it?

A. No, it is not. It sounds like this but it is not and, besides, there is court practice to which I refer in my reports and Professor Sukhanov is not a judge which says that if the condition on the appraisal of the shares is missing, it does not necessarily mean that the simple partnership agreement was not concluded or is invalid or

has another error or mistake in it. And, besides, I would like to draw the attention of my Lady to a citation in Sukhanov and this is right after the beginning of this three essential terms where Sukhanov says G(A)4/6.63/69:

"For certain kinds of simple partnership agreements, the list of material terms may be expanded by law. For instance, under Article 98 of the Civil Code and Article 9 of the Law on Joint-Stock Companies, a joint venture agreement on the formation of a joint-stock company must specify terms regarding..."

And then there is a continuation of what Professor Sukhanov thinks, so that's the example which shows to you that agreements on formation of legal entities are simple partnership contracts. Sorry for getting back to this topic again but I think it was quite important for Mr Sumption.

MRS JUSTICE GLOSTER: Which you say illustrates the point you were making earlier?

A. Yes, correct.

MR SUMPTION: Professor Sukhanov obviously considers that there are also, in addition to mandatory requirements, there are "nice-to-have" requirements but the requirements that he summarises at page 70 of the bundle G(A)4/6.63/70, this is a paragraph in which he is

summarising what the term on unification of the contributions must contain. The term on unification of the contributions is the first of the three essential terms that he refers to right up in the first paragraph, isn't it?

A. Yes.

Q. The merging of contributions is the first absolute requirement and, in the last paragraph of the extract, what he is doing is explaining what the term on the merging of contributions, an essential term, has got to contain, isn't he?

A. Yes, but what is the purpose of this regulation? The purpose is to make sure that the parties know what they must perform. If the parties already performed their obligations, there is no dispute any longer about what they were obliged to contribute. Therefore, this case to which you and Professor Sukhanov refer is different from the case at hand.

Q. But if you make a simple partnership agreement and before you've started to perform it you go to a lawyer and say, "Is this a valid agreement?", the lawyer will say, "Well, unless you have specified the shares of the resultant common property and agreed a monetary evaluation of your contributions, no, it's not a valid agreement". Isn't that right?

A. No, it is not right. It is important to identify the contributions, not the shares -- not the appraisal of the shares, not the appraisal of the contributions because they can be derived on the basis of default rules contained in the Civil Code and regulating simple partnership contracts.

Q. Well, we'll come to the default rules in a moment.

Now, suppose that the agreement which the parties made in 1995 was that the partnership shares should be 50 per cent for Mr Abramovich and 50 per cent for Mr Berezovsky and Mr Patarkatsishvili jointly. Just suppose that that was what was agreed, okay?

A. Okay.

Q. Now, I think you accept, don't you, given your earlier answers, that Mr Patarkatsishvili and Mr Berezovsky could not validly have agreed to hold their partnership share jointly, because this isn't a case which is provided for by legislation?

A. I agree.

Q. Now, would you accept therefore that, if the parties have expressly agreed that the interest of two out of three partners is to be joint, then there is no basis on which it can be treated in Russian law as an agreement for defined shares?

A. It's --

Q. If they've expressly agreed that the interests of the two of them in a partnership is to be joint, they've simply entered into an ineffective agreement, haven't they?

A. I do not agree with that.

Q. Do you say that if they have expressly agreed that their interest is to be joint, nevertheless by law it can be treated as a share agreement in the language of Article 244, a defined share agreement?

A. As I understood the particulars of claims --

Q. I'm not asking you to express an opinion on the particulars of claim, I'm putting to you a hypothesis, okay? And the hypothesis I'm putting to you is that these three people have expressly agreed that Mr Abramovich is to have a 50 per cent interest in a partnership agreement and that the other 50 per cent interest is to be held by Mr Berezovsky and Mr Patarkatsishvili jointly.

Now, if my Lady were to find that that is what had been expressly agreed, do you accept that that is an ineffective agreement?

A. It depends on the parties' intention. If the parties intended to have common and not shared ownership, then indeed this is an invalid agreement.

Q. Thank you.

My Lady, I suspect that rather than embarking on the next question, your Ladyship might wish to rise now.

MRS JUSTICE GLOSTER: Very well.

Wednesday, Mr Rabinowitz, arrangements can be made, as far as I understand it, to sit.

MR RABINOWITZ: Indeed, and I understand the transcript writers can be here as well, my Lady. So Mr Sumption is here, your Ladyship is here, Mr Rozenberg and myself are here.

MRS JUSTICE GLOSTER: That's subject to any wider considerations of whether the courts will be open but as I understand at present -- but I'll let you know tomorrow.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: But you should work on the basis that the court will be sitting. Very well.

You understand that you're not to talk about your evidence or the answers you've given or the case overnight.

THE WITNESS: Yes, my Lady, I do.

MRS JUSTICE GLOSTER: You understand that. Very well.

Thank you very much. 10.15 tomorrow.

(4.30 pm)

(The hearing adjourned until

Tuesday, 29 November 2011 at 10.15 am)

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