

Thursday, 17 November 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Colton.

MR ALEXEI GRIGORIEV (continued)

Cross-examination by MR COLTON (continued)

MR COLTON: Mr Grigoriev, at the end of yesterday, I was dealing with your suggestion that you did not have the opportunity to read the transcript of 5 March 2009 interview when you returned to the General Prosecutor's Office on 10 March 2009 because, you said, you were instead subjected to a second interview. You pointed out that the second interview transcript is also in the bundle.

Would you please take up bundle H(C)8 again. Would you please turn in this bundle to 95 H(C)8/95 in the Russian or 95T in English H(C)8/95T. This is the transcript of the second interview to which you referred. That's right, isn't it?

A. Well, it is the second one in your sequence of documents, the way you count the documents. I must say that I've had more than two meetings with that investigator and, my Lady, I would need your assistance here, if I may, because I've not been able to consult with anyone on this.

Every interview like this is covered by my

obligation not to disclose the contents and the two interviews here have been disclosed within the framework of the French investigation, someone has done that. Disclosure, I do not know to what extent that was done in an appropriate way, but this has been done. Now, the interviews which are not here I believe have not been disclosed, and do I understand correctly that they are still covered by my obligation not to disclose, because the investigation is still going on, the matter has not been closed, the materials have not been forwarded to any court for a hearing yet and, therefore, I really do not know what my line of conduct should be in this respect.

MRS JUSTICE GLOSTER: Okay. These are interviews which you gave in Russia, yes, to the investigating authorities in Russia?

A. Yes, that is correct, and the criminal case was open in Russia, it's a Russian criminal case, not a French criminal case.

MRS JUSTICE GLOSTER: Right. And under Russian law, you think you have obligations of confidentiality in relation to those, do you?

A. Well, maybe even in these materials there are some documents which I have signed which say that I have an obligation not to disclose. I do not know whether it

was scheduled as an exhibit here, but it was part of the investigation.

MRS JUSTICE GLOSTER: Okay. How many more interviews are there which are not covered by the transcripts which we've seen already?

A. Well, I would not be able to give you the exact figure, but on the whole I think it was approximately four interviews, maybe five or maybe three, I may be confused a little bit but I think, I think, I believe there were four interviews.

MRS JUSTICE GLOSTER: Four interviews in total?

A. About four interviews within the -- conducted by this specific investigator. There have been other investigators, but this particular investigator, with him I think I've had about four meetings with that particular investigator.

MRS JUSTICE GLOSTER: Okay. Of which only two are in the documents that you've been taken to?

A. These two interviews I can see bring -- one common feature is that they focused on the Runicom loan. Other interviews focused on other things, they had other objectives.

MRS JUSTICE GLOSTER: Right. Well, until counsel for either side make an application to me for sight of those further transcripts, you can regard yourself as bound by

your obligations under Russian law of confidentiality.

A. Thank you. Thank you very much.

MRS JUSTICE GLOSTER: You understand? So until I make a specific ruling on the application of counsel for either side, you can regard yourself as not under an obligation to disclose what was said in those interviews.

A. I have understood. Thank you very much, my Lady.

MR COLTON: Mr Grigoriev, in your answer yesterday, you said of the second interview:

"At the same time an additional witness statement was provided and additional interview protocol was drawn up."

My Lady, this is Day 27, page 127, lines 11 to 15:

"That wasn't a time for familiarisation. This is a time for the interview, that was interview time, and you do have the materials about that interview ..."

So yesterday, when you were trying to explain that you hadn't read the transcripts, you relied upon the interview for which you said we had the materials.

Do you understand?

MRS JUSTICE GLOSTER: No, I don't understand the question. I think you're going to have to put it more simply or take him to the transcript because it's too difficult for him to understand that.

MR COLTON: Yesterday, Mr Grigoriev, you told us that you didn't have the opportunity on 10 March 2009 to read the transcript of the 5 March meeting. Do you recall that?

A. Well, maybe I misspoke or you misunderstood me. What I was saying was that I had not listened to the tape recording, to the audio recording, that's number one. The minutes itself, the text of the interview, when it was offered to me that I should read it, I did read it but I did not focus on the issues that we discussed, you and I discussed yesterday: have or have not there been those meetings?

What I focused on were the questions that were the basis, the reason for that particular interview, and that was the loan that had been provided by Runicom. Some matters related to the way that loan was recorded and so on and so forth. So those were the details that I focused on and read very attentively before signing off on that.

Now, so far as my acquaintance or lack of acquaintance with those people who were not related to that loan are concerned, well, obviously, I did not pay attention to those, and I'm really sorry now I did not pay attention to them then. And, as I mentioned yesterday, it is my intention now to make adjustments to correct that, and because the materials, the case

materials, have not yet gone to court I do hope that these inaccuracies will not result in any serious consequences, because the way I see it they do not have any -- they did not have any serious importance.

Q. Are you saying, Mr Grigoriev, that you didn't realise in 2009 that Mr Abramovich was in any way connected with Runicom?

A. No. What I meant both then and now is that the signing and the performance of this contract with Runicom was something that Mr Abramovich definitely did not have anything to do with.

It was an absolutely standard operation for the bank. It was one of many similar operations, it was not conspicuous in any way, it was not different. It only became different, it was distinguished in -- within the framework of that criminal case and now within the framework of these hearings. At that point in time it was not distinguishable and it was not conspicuous in any way, it was not different from the many others.

Q. So you did know that Mr Abramovich was connected with Runicom when you denied having met him, is that right?

A. I did know that Runicom, the company, and we knew that it was part of Sibneft group of companies, and Mr Abramovich did have a direct relationship with and a direct link to that group of companies. That I knew.

Q. Could we then move on to another inconsistency in your evidence. Would you please go in H(C)8 to page 13T in English H(C)8/13T or page 11 in Russian H(C)8/11.

Now, the second question on that page, it says:

"Investigator: Then let us go into this in detail. What were the relations between SBS-Agro Bank and the Joint-Stock Company Sibneft in the 1990s? Did SBS-Agro Bank take part in financing the acquisition of shares in Sibneft when that company was formed?"

Do you see that?

A. Yes, I can see this question.

Q. And then you provide an answer:

"The bank took part in this operation."

And you explain about the financing of the operation.

The investigator then asks:

"The client -- whom do you mean? By the word client."

You explain that:

"There were several companies there, organised by Sibneft ... to take part in that auction."

The investigator then asks:

"How could Sibneft itself have been able to form companies to take part in the pledge auction [the loans-for-shares auction]."

And your answer is that you don't remember the names of the companies that had participated.

Then we have this:

"Investigator: These companies, did they represent somebody's interests?

"Witness: Mr Gorodilov discussed this question with us.

"Investigator: Which one?"

And you say:

"Andrei."

Over the page, the investigator clarifies:

"That is, the son."

And you say:

"It was only Andrei with whom we spoke. Just at that time the elder [Gorodilov] came and signed deposit contracts. But again, this was not negotiation, but the execution of contracts."

Do you see that?

A. Yes, I can see that.

Q. Would you now please be given bundle E4 at tab 06 again, this is your first witness statement in these proceedings. Paragraph 14 is at page 94 in English E4/06/94 or page 106 in Russian E4/06/106. We looked at paragraph 14 yesterday but you might want to just refresh your memory of it again now. (Pause)

A. Which paragraph is that?

Q. It's paragraph 14. Paragraph 14.

A. Yes, I have read this.

Q. So we see that here and indeed in the following paragraphs you claim that Mr Gorodilov senior, Viktor Gorodilov, was at a meeting devoted to the potential involvement of SBS in the deal. Do you see that?

A. Yes, I can see that.

Q. And if you look on to the end of paragraph 15, we see that you refer there to Mr Abramovich and Mr Viktor Gorodilov deciding or having decided to approach SBS. Do you see that?

A. Yes, I can see that.

Q. If you turn on a couple of pages E4/06/97 you will see paragraph 21 of your statement. In the first line you see there reference to an agreement or having agreed with Mr Abramovich and again Mr Viktor Gorodilov. Do you see that?

A. Yes, I can see that.

Q. So while in the Russian investigation you said very clearly that there was no negotiation with Mr Viktor Gorodilov in respect of the loans-for-shares auction, in these English proceedings you're saying that there was negotiation. Do you wish to comment on that?

A. Yes, I'm happy to -- I'm ready to comment on that. One really needs to have a huge wish to find a disconnect here and I'm sure that you have that wish. Even though I'm following your logic very closely, I did not see any disconnect here. The questions which the investigator was asking were of a purely technical nature, he was not asking about any specific things.

On the whole, he was asking about the interaction during a long period of time. He's not referring to specifically November '95 or -- November '95, but he is in general speaking about the dealings with the group of companies Sibneft. And I am more than happy to confirm that during a protracted period of time of our dealings with that group of companies the main contact person was Andrey Gorodilov, while Viktor Andreyevich Gorodilov did visit the bank several times, at least I can recall two such visits by Viktor Gorodilov. We did have an original, initial meeting and I have a very clear recollection of that and I can explain why.

And then at least there was another -- a further, more technical meeting in order to draft some contracts, some documents. On the whole, other documents that he signed on did not require his visit, but they were signed while he did not visit the bank, but he -- but after that a large number of documents that were signed

by Viktor Andreyevich Gorodilov, they were signed without him actually visiting the bank, but at least two meetings I do remember vividly.

Q. Mr Grigoriev, you began that answer by claiming that you were being asked about the interaction over a long period of time. If you turn back again to the Russian interview which I took you to H(C)8/13T, the section which we went through began with a very specific question about financing the acquisition of shares in Sibneft and went on to ask about the loans-for-shares auction. You were clearly being asked about your dealings with Mr Viktor Gorodilov in late 1995, isn't that the truth?

A. Well, you have just referred to the purchase yourself. The purchase of the shares took over a year, you have just said this yourself. You've pronounced this word yourself.

Q. I must suggest to you, Mr Grigoriev, that the evidence which you gave in the Russian investigation is inconsistent with the evidence which you give now and that it shows on your part a willingness to lie if it suits you. Do you wish to comment on that?

A. Well, I categorically disagree with this, and this only means that there are different forms in which this information is being received, which you are trying to

compare. And these two forms are incomparable. One thing is an investigation in the General Prosecutor's Office and the questions are being asked of you spontaneously, and you're not prepared, and they ask you about things that had happened ten years prior to that or more than that, and you have to answer immediately, right away, and sometimes those questions are not that important for that particular interview.

And then, on the other hand, it's a totally different situation where you can prepare yourself, you can refresh your recollections and you can set out the information that you have in appropriate manner.

You are now comparing these two different approaches. And when you make a selection, you make a selection in favour of the document that was based on this quick unthought-through provision of information as opposed to a thought-through and well-weighed-up provision of information. This is your judgment call and you're free to make it.

MRS JUSTICE GLOSTER: Well, at the end of the day it's my judgment call. I think we've been round this buoy, Mr Colton.

MR COLTON: Yes, my Lady.

Mr Grigoriev, I now want to ask you about SBS's decision to fund NFK's bid in the auction for the right

to manage 51 per cent of Sibneft at the end of 1995.

You are aware, I think, that there were a number of meetings during 1995 between Mr Smolensky, Mr Berezovsky and Mr Patarkatsishvili. Is that right?

- A. Well, I know nothing about meetings with respect to the shares for auctions -- auction that you've just referred to. The meetings were between Mr Berezovsky and Mr Smolensky, they communicated very closely, and they may well have discussed lots of different questions. I usually did not attend those meetings and therefore I don't have any comment on that.

The shares for auctions theme at that time was being widely discussed and debated, and definitely most probably in the course of their meetings they did address that, they did discuss that. And I mean I do not believe that this statement is in contradiction with anything else.

Now, whether Mr Patarkatsishvili took part in that I do not know but, once again, there is nothing that would induce me to say anything to the contrary. No such meetings were held in the bank. One thing that I can assert and I can affirm is that no such meetings have ever been held in the bank.

- Q. So you accept then that there were meetings in 1995 between Mr Berezovsky and Mr Smolensky, is that right?

A. They did happen regularly, they were meetings of a regular nature, it was a club-type kind of communication. There were both bilateral meetings but then there were other meetings as well, not only with Mr Berezovsky but also with other members of the business community, with other bankers, including such people as Mr Khodorkovsky, Mr Fridman and so on.

Q. And you believe that Mr Patarkatsishvili also attended some of those meetings, is that correct?

A. I believe that that is a distinct possibility, this is not inconsistent with my understanding of what was happening at that time.

Q. Well, not only is it not inconsistent with your understanding, this is exactly what you say in your witness statement.

If you look at paragraph 11 of your first statement, it's in page 93 in English E4/06/93, 105 in Russian E4/06/105, in the last sentence you say:

"I believe that Mr Patarkatsishvili, who I understand to be Mr Berezovsky's right-hand man and who in 1996 became the Chairman of the Board of Directors of Consolidated Bank, also attended some of these meetings."

So that was your belief at the time you wrote this statement, is that right?

A. Well, I think what I'm saying now is approximately the same thing.

Q. When you then go on in paragraph 14 of your statement E4/06/94 to say that:

"... the initial approach to SBS in relation to the Sibneft 1995 auction was made by Mr Abramovich and Mr Viktor ... Gorodilov."

You cannot honestly say that, because you don't know what discussions there had been with Mr Smolensky, isn't that right?

A. No. What I'm saying here is that that meeting was conducted in my presence and I took an active part in that meeting.

Q. That meeting, the meeting to which you refer, may have been in your presence, but the point I'm putting to you is that you do not know that that was the first meeting involving Mr Smolensky and someone asking for SBS's assistance on behalf -- in the 1995 auction. Isn't that correct?

A. Well, I may have not known this. I agree with your logic, I agree with your assumption, but I know this from Mr Smolensky, if this is of any relevance at all. Because at that time we worked very closely with him and we would still communicate quite closely with him. And his view of all the matters that might have been of

interest to me is, in principle, well known to me.

I know what his opinion is. Now, whether this additional information is relevant or not I do not know, but I do have information, I do know that that meeting was the very first meeting at which the dynamics, the techniques of that particular transaction that, at the end of the day, was implemented, was being first discussed.

Because that information was being discussed initially, no party was prepared, none of them had come to that meeting with a prepared solution. The solution was -- the decision was worked out at that meeting. It was a very simple solution, a very simple decision, therefore they only needed one meeting to arrive at that.

- Q. So the proposal for SBS's involvement pre-dated the meeting but it was at that meeting that the dynamics or the techniques were discussed, is that the evidence you're giving?
- A. I believe that this meeting was the initial, the first meeting at which that proposal was raised, discussed, and a solution was found which, mind you, was a very simple solution, and later on that solution was actually realised, it was implemented. And I have mentioned that I remember that meeting quite well, but I remember this

as a meeting with Viktor Andreyevich Gorodilov, not a meeting with Mr Abramovich whom, prior to that meeting or immediately after that meeting, I did not even know who he was.

But Viktor Andreyevich Gorodilov, he -- well, actually there is this term red director, which is used in the case materials, and many people believe that this is a derogatory, negative term. To me, this was the person who was the depository of a lot of knowledge of fantastic expertise, who was running a huge enterprise. He had put that enterprise in place, he was managing a town which was a one-company town at that time. This was a man with whom, when you have meetings, you remember those meetings. I have a lot of respect for those kind of people, and that meeting was a meeting with Gorodilov specifically.

And in order to agree on that meeting, he did not need anyone's protection. That person could have walked into any bank, and everyone, any banker, would have had a meeting with him with great pleasure because you could predict what kind of interest you might have there. You did not need anyone's requests or recommendations, you could do it like that, walk into the bank, and any head of the bank, any chief executive, could have had a meeting with that person. And I recall that meeting

very well because that was the only significant meeting with that kind of person, with that specific individual.

MRS JUSTICE GLOSTER: Mr Grigoriev, can you keep your answers a bit shorter please. You've made the point but you've made it about three times.

A. I beg your indulgence. I'm very sorry, my Lady.

MR COLTON: Mr Grigoriev, Mr Abramovich has told this court that Mr Berezovsky introduced him to Mr Smolensky, and that Mr Berezovsky helped Mr Smolensky develop the wish and desire to act in the 1995 Sibneft auction. Were you aware that this was evidence which Mr Abramovich had given?

A. Yes, I do know that.

Q. And so, if Mr Abramovich is telling the truth on this point, then it was Mr Berezovsky who introduced him to Mr Smolensky, and this was not the first meeting; the meeting to which you refer was not the first meeting which raised the issue of involvement in Sibneft.

MR SUMPTION: My Lady, the implication that that was Mr Abramovich's evidence is mistaken and it shouldn't be put to the witness in those terms. It can be put as a suggestion of counsel but not on the basis that that is what Mr Abramovich said.

MRS JUSTICE GLOSTER: Right.

Well, I'm not going to go back to the transcripts,

Mr Colton, to see what Mr Abramovich said. So please put it on the basis that it is your client's case that that was the position.

MR COLTON: My Lady, yes. If later we do seek the transcript reference, it's Day 17, page 100, lines 10 and following.

MRS JUSTICE GLOSTER: Right. Well, there is a limited utility in putting to witness B what witness A has said in certain circumstances. I think it's better you just put the proposition to him and the witness can deal with it on the basis of his own knowledge.

MR COLTON: Yes, my Lady.

Do you accept, Mr Grigoriev, that Mr Berezovsky introduced Mr Abramovich to Mr Smolensky?

A. I think that this was indeed the case. There is no way I can know that with certainty, but I believe that that was the case.

Q. And could you accept that Mr Berezovsky assisted in persuading Mr Smolensky to agree to the involvement of SBS in the 1995 Sibneft auction?

A. Well, if we make the proviso that the format of participation kept changing and originally something much more sophisticated was being thought about, then that might well have been the case. But the way this particular option was realised, that particular option

was raised at that particular meeting and it was not a very sophisticated thing, something that might have required the involvement of Mr Smolensky or Mr Berezovsky. This was a very simple thing, and it was realised in a very simple way and it required the authority of myself or maybe even the authority of my employees only.

Q. So if I've understood you correctly, Mr Grigoriev, your evidence is now that this meeting which you describe in paragraph 14 E4/06/94 was not the first discussion relating to SBS's involvement in the Sibneft auction --

MRS JUSTICE GLOSTER: I don't think he's put it quite like that. I think he said he didn't know but it could have been. I don't think he's giving evidence from his actual knowledge as to whether there was a prior meeting.

Do you know from your own knowledge whether or not there was a prior meeting?

A. I have no knowledge of that.

MR COLTON: I shall move on to another point then.

Would you please read to yourself paragraph 23 of your first witness statement. It's at page 98 in English E4/06/98 and 110 in Russian E4/06/110.

(Pause)

A. Yes, I can see that.

Q. Now, you're here responding to the evidence of Dr Dubov which, for my Lady's note only, is at paragraphs 66 to 72 of Mr Dubov's first statement D1/12/275. And Dr Dubov's evidence, and I don't think you dispute this in your witness statement, is that Dr Dubov attended SBS with the Logovaz seal towards the end of 1995 having been told by Mr Patarkatsishvili that a guarantee from Logovaz might be required.

Now, I know we'll have a disagreement perhaps on the nature or the purpose of that guarantee, but I don't think you dispute that part of the events at least, is that right?

A. Well, I will just try to reiterate what I attempted to set out in my witness statement. I do not recall ever having seen Mr Dubov or Mrs Nosova. To be honest, I do not recall that. Having said that, it may well be that such meetings have taken place, I just do not recall those.

So far as Mr Dubov's witness statement is concerned, to the effect that he came to the office with a seal it is a possibility, but I never discussed that with him and I never met with him. Once again, as an assumption, as an assumption, as to why he went there with a seal, if he did go there with a seal, what I can only say is that it might have been related to the ORT loan which

was being processed in December '95, and some serious money in December had been provided by the bank, and in that sense the bank did need some security, did need some additional guarantees because that particular loan was not processed properly in terms of credit risks.

So far as the Sibneft loan was concerned, there was no credit risk, we did not need any security, we did not need any additional guarantees, much less from Logovaz whose financial capabilities were not big ones so far as I was concerned. I did not know what Logovaz guarantee was worth in '95, and I was not -- I did not know whether or not they were actually capable of providing a security or a guarantee to the extent of \$100 million. I do have serious questions about that.

Q. Now, in fairness to you, Mr Grigoriev, Dr Dubov doesn't specifically say that you were at the meeting which he recalls attending. He says it could have been you or it could have been Mr Raskazov, another senior employee of the bank. So I'm not suggesting to you that you were necessarily at the meeting.

But you accept that a guarantee of an amount close to \$100 million in favour of SBS by Logovaz might have been prepared, you can't dispute that I think?

MRS JUSTICE GLOSTER: I don't think he accepts it. I think you must put your questions a bit more specifically,

Mr Colton.

MR COLTON: My Lady, I'm reading from his witness statement.

It's in paragraph 23, in the fourth line:

"I can only comment that such guarantee might have been prepared ..."

MRS JUSTICE GLOSTER: "... might have been prepared ..."

Anyway put the question again.

MR COLTON: From your witness statement, Mr Grigoriev, you accept I think that a guarantee for an amount close to \$100 million in favour of SBS by Logovaz might have been prepared, is that right?

A. Well, this was up to Logovaz, and within Logovaz any kind of activity may have been conducted and that was probably something that I had no knowledge of. But what I do know is that neither with respect to the Ministry of Finance loan, nor unfortunately with respect to ORT loan, no guarantees were provided to the bank. And so far as I understand, we are now speaking about a properly legally processed document with the signatures, with all the seals attached, ie those documents that would have been properly recorded.

And I can tell you with certainty, and responsibly, that no such documents were ever received by the bank. The ORT loan in terms of the amount, when we're talking about \$100 million, the final payable by ORT with

respect to the bank by the time when it matured was about \$55 million. So we were talking serious liabilities and then a serious guarantee.

So even in terms of the timeline and in terms of the amounts there is some crossover here. So it is possible that that kind of security was being discussed, but that was discussed with respect to the ORT loan because, for the Sibneft loan, there was simply no need for that.

Q. You say in your witness statement, and you've said again now, that the ORT loan was only in the region of about \$55 million. Is that right?

A. In February, March 1997 I believe that loan was repaid and the total outstanding amount at that time was about \$55 million. But in December 1995, that outstanding amount was probably about 20 million, maybe a little bit less than that.

Q. Because in fact the first tranche of the loan was only made in December '95, is that right?

A. That is correct.

Q. And as for this loan, you've explained in paragraph 13 of your first witness statement, which is at page 94 E4/06/94, or 106 in Russian E4/06/106, that this was a political project rather than a matter of business. That's in the opening few lines, do you see that?

A. Yes.

- Q. And that being so, I suggest it was extremely unlikely that there would have been discussion of a guarantee in the order of \$100 million in support of such political project at a time in particular when the first tranche of \$20 million or less was being paid.
- A. I'm not sure I got the gist of your question. Could you kindly repeat?
- Q. You have accepted that the ORT loan was a political project rather than a business matter. As such, I suggest to you that it is extremely unlikely that there would have been discussion of a \$100 million guarantee to support it. That is what I'm asking you to comment upon.
- A. Well, if I understood you correctly, the question is whether or not a \$100 million guarantee, and you are focusing on that particular amount, could it be discussed at that time with respect to the ORT loan?

Once again, I believe that that is not very likely, and I do not recall any discussion of such a guarantee with respect to either the ORT or the Sibneft loan, as I have already mentioned.

I'm simply responding to what Mr Dubov has said who has alleged that he was sitting there, with a seal there, and was prepared to record that guarantee. But the ORT loan guarantee was never recorded even though

I did believe that it was a difficult loan,
a complicated and rather risky loan, and we were all
delighted when that loan was repaid in early 1997.

Q. Do you recall that the bid in the Sibneft
loans-for-shares auction in December 1995 by NFK was for
\$100.3 million?

A. Yes, I know that the transaction was executed to that --
rather, the transaction was performed to that amount, to
the extent of that amount.

Q. And do you recall also that there had been a \$3 million
deposit paid in advance?

A. Yes, that was one of the terms and conditions of that
particular auction, but we refused to make that money
available because it was not refundable. And if the
company lost the bid, lost the auction, the money would
not have been refunded, from what I understand, and
therefore the company had to find and raise that money
on its own, and we did not assist the company in that.

Q. SBS did assist in the remaining \$97.3 million even if it
had in fact received the money from elsewhere in
advance, is that right?

A. SBS was acting at the instruction of a client of the
bank. The group of companies placed a deposit to the
relevant amount. We recorded security documents whereby
those deposits became pledged -- they were pledged as

collateral under the Ministry of Finance, under the Ministry of Finance loan which was provided to the extent of the same amount.

Q. I suggest to you, Mr Grigoriev, that if there was a guarantee being discussed for close to \$100 million, it is much more likely to have been in relation to the Sibneft auction than any ORT loan. Do you wish to comment on that?

A. Yes, I would like to comment. If I have money to that amount, what kind of guarantee do I need? And also, excuse me, there's a rhetorical question but I would like to ask it anyway. To what amount could Logovaz provide a guarantee at all? Are you saying it was solvable, it was credible to the amount of \$100 million? I don't think so.

If they had had such money themselves then why are we altogether collecting \$5 million in order to pay ORT salaries? Because chances were that people would go off on a New Year's vacation without receiving their salaries. Now, if they did have that possibility available to them, why didn't they avail themselves of that possibility? I believe that Logovaz did not have that ability to provide guarantees to the extent of \$100 million. They simply were not able to do that.

MR COLTON: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much, Mr Colton.

Mr Malek?

MR MALEK: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin.

MR ADKIN: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Sumption.

MR SUMPTION: No re-examination.

MRS JUSTICE GLOSTER: Thank you very much indeed,

Mr Grigoriev, for coming along to give your evidence.

(The witness withdrew)

I propose to start the next witness before the
break.

MR SUMPTION: Before the break.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: My Lady, before we do that, the next witness
is Mr Tenenbaum but before he takes the stand can I just
raise with your Ladyship the question of the trust deeds
which arose in the course of Mr Shvidler's evidence.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Your Ladyship raised with me the possibility
that the trust deeds might permit the addition of
further beneficiaries. Can I, in the hope of defusing
this situation, say what the situation is and how we
propose it should be dealt with.

There were two successive trusts, there was

a Liechtenstein trust which was operative between 1999 and 2001, and there was a Cyprus trust which was operative from 1 March 2001 and still is. The beneficiaries under the Liechtenstein trust were Mr Abramovich and, on his death, his children.

The foundation, essentially the equivalent of the trustees, had a power to add relatives of Mr Abramovich to the beneficiaries with the consent of the protector, Mr Shvidler. There was also a power to alter the whole of the regulations which could, in principle, have been used to alter the beneficiaries but only with the consent of Mr Abramovich himself.

MRS JUSTICE GLOSTER: So, theoretically, it was one of those trusts where they could have put in anybody but only with the consent of the protector?

MR SUMPTION: Well, no, it would have to be a relative if they added beneficiaries.

MRS JUSTICE GLOSTER: Oh, I see.

MR SUMPTION: But they could have altered the whole regulations, thereby reframing the provisions about extra beneficiaries with the consent of Mr Abramovich. So by that route it could have been done.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: The position in relation to Cyprus is very slightly different. The beneficiaries there were

Mr Abramovich and, after his death, his children. The trustees had a power, in very common form, to add anybody as a beneficiary with the consent of the protector who was, again, Mr Shvidler. The position in relation to that trust is that Sibneft was among the assets but Rusal was not. That may well make the point that there were possibilities under both of those deeds for adding beneficiaries, which I think was the point that was of interest to your Ladyship when this last came up.

What we have done about this, and as your Ladyship will appreciate, this is extremely sensitive --

MRS JUSTICE GLOSTER: I can appreciate that.

MR SUMPTION: -- not just for personal reasons but for the security implications.

MRS JUSTICE GLOSTER: Well, certainly the Cyprus trust provisions are. The Liechtenstein I question, but I can see that in relation --

MR SUMPTION: That may well be right.

We are also slightly concerned because, and I'm certainly not levelling accusations against anyone at the moment, but documents from our disclosure have, as I understand it, been offered for sale in Moscow, which is a source of some concern for us and we would not like to see this category of documents joining those which

have been treated in that way.

Now, what we have done --

MRS JUSTICE GLOSTER: Well, I can't deal with that unless a specific application is made to me from either side.

MR SUMPTION: No, I am only explaining to your Ladyship why this is a matter of sensitivity.

At any rate, what we have done, we have supplied to Mr Rabinowitz for his eyes only the Cyprus deed, and we will, as soon as it arrives, which we expect to be some time today, supply him, for his eyes only, with the Liechtenstein deed so as to verify what I have just told your Ladyship.

We hope that that will be enough, but at any rate we don't accept that the matter can be relevant to any greater extent, and if my learned friend wishes to make further use of them, then it will need to be the subject of an application. But we hope that that will effectively defuse the matter.

MRS JUSTICE GLOSTER: Yes, thank you.

Mr Rabinowitz, I'll wait, and if you wish to make an application for anything further I will entertain it, obviously.

MR RABINOWITZ: I'm grateful for that, my Lady. And indeed what my learned friend says reflects upon the conversation we had, save for this, I think my learned

friend was content for me to show it also to my
solicitor, Mr Hastings.

MR SUMPTION: That has, as I understand it, been agreed
also.

MRS JUSTICE GLOSTER: Very well. If you want to take it
further, Mr Rabinowitz --

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Right, then I will take the break now.
Ten minutes.

(11.13 am)

(A short break)

(11.29 am)

MR SUMPTION: I call Mr Tenenbaum. He will be giving his
evidence in English.

MR EUGENE TENENBAUM (affirmed)

MRS JUSTICE GLOSTER: Do sit down, Mr Tenenbaum.

THE WITNESS: Thank you.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Tenenbaum, could I ask that you be given
bundles E3, E4 and E8. In bundle E3, would you turn to
flag 11 E3/11/71.

A. I have.

Q. Now, you made three witness statements for the purposes
of this trial, I think five altogether, and this is the
third witness statement, the first for the purpose of

the trial. Is that right?

A. Yes.

Q. It's your signature that we see on the last page,
page 113 of the bundle?

A. It is my signature.

Q. Now, there are some corrections which you wish to make
to this which I think you probably have in front of you
on a separate piece of paper. Is that right?

Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I have two copies, thank you.

MR SUMPTION: Are those corrections you wish to make to your
third witness statement, the first for the purpose of
the trial?

A. Yes, it's true.

Q. Subject to those corrections, is this witness statement
true?

A. Yes, it is.

Q. Now, could I ask you to turn, please, to bundle E4 at
flag 9 E4/09/155.

A. Yes.

Q. Is this your fourth witness statement?

A. Yes.

Q. And is that signed by you on the final page, page 158 of
the bundle?

A. Yes, it is.

Q. Is that also true?

A. Yes, it is.

Q. Could we please now turn to bundle E8 at flag 1
E8/01/1. Is this your fifth witness statement?

A. Yes, it is.

Q. Signed by you on page 12 of the bundle?

A. Yes, it is.

Q. Is that true?

A. Yes, it is.

MR SUMPTION: Thank you very much.

Cross-examination by MR RABINOWITZ

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, your evidence is that in --
this is what you say E8/01/10:

"In Russia management is key and every significant
appointee at Sibneft from its creation in 1995 was
Mr Abramovich's."

Is that right?

A. Yes, I believe so.

Q. And the result, you say, in your evidence, is that:

"People loyal to him were embedded deeply across the
organisation..."

Is that correct?

A. Yes, it is.

Q. And you were appointed to Sibneft in 1998 as head of

corporate finance, correct?

A. Correct.

Q. This would have been a significant appointment for Sibneft, I suppose, so you would have been appointed by Mr Abramovich?

A. Correct, with Mr Shvidler.

Q. And you explain that it followed several meetings with Mr Abramovich and Mr Shvidler, and you also say this E3/11/78, that having met Mr Abramovich and Mr Shvidler you agreed to join Sibneft because of your "belief in Mr Abramovich's business acumen and personal integrity."

Did you not feel the same way about Mr Shvidler?

A. On the contrary, Mr Shvidler was the one that hired me so I felt that way as well, of course, about him.

Q. Prior to joining Sibneft, you were a director of Salomon Brothers in London?

A. Correct.

Q. In 1997, when you were part of the team working on the offering circular for Sibneft's Eurobond issue, you tell us you were a relatively senior vice president at Salomon, is that right?

A. I was a vice president, yes.

Q. A relatively senior vice president?

A. I was made director when I left the following year, yes,

so I was senior.

Q. You also tell us that you had been given to understand that you had a promising future within the ranks of the company, is that right?

A. Correct.

Q. Can one therefore assume that you were offered a very attractive remuneration package in order to move to Sibneft?

A. Correct.

Q. Were you offered any shares or interest in shares in Sibneft?

A. No, I wasn't.

Q. You continue to work for Mr Abramovich today as managing director of MHC Services, is that right?

A. Correct.

Q. And you're also a director of Chelsea Football Club Limited?

A. Correct.

Q. You have now been working for Mr Abramovich's company for well over ten years?

A. Yes. More than that even.

Q. And you're a member of the team of people that Mr Abramovich trusts and relies upon, aren't you?

A. I hope so. Yes. Sorry.

Q. And you are in fact a close friend of Mr Abramovich's?

A. I think so, yes.

Q. And Mr Abramovich tells us that you work together, relax together and generally spend time together, is that right?

A. Relax? Yes. He's not very relaxed, but yes, we spend time together.

Q. All right. He also told the court that you assisted him in the preparation of his witness statements in these proceedings.

A. I primarily helped Roman in this process, yes.

Q. Can you tell us how you helped Mr Abramovich in that process?

A. Well, I coordinated with the lawyers, with Skadden, to ensure that a lot of the witnesses were on time and -- because they were in Russia, but primarily I was helping Roman understand the issues in this case.

Q. Well, I put to you that Mr Abramovich told the court that you assisted him in the preparation of his witness statement in these proceedings.

A. Preparation of the witness statement itself?

Q. I think his witness statements.

A. Okay.

Q. And that's right, isn't it? Because the answer you gave --

A. Yes, okay, fine, yes, I assisted him, correct.

Q. -- seemed to relate to coordinating when other witnesses would be at various places, but it obviously went beyond that?

A. Sorry, sorry, I helped Roman understand the issues in the case, yes.

Q. Ms Panchenko tells us that you were one of a group of people who got together before producing witness statements to see if you could together recollect events, is that right?

A. That is correct, yes.

Q. Now, could I ask you, please, to go to paragraph 8 of your third witness statement, that's bundle E3, tab 11, you'll find it at page 73 E3/11/73. This is where you set out your commentary on the Sibneft Eurobond issue in 1997. You've explained that at this time you were working for Salomon Brothers, correct?

A. Correct.

Q. You also tell us that although you were relatively senior you didn't have overall responsibility for the offering. Overall responsibility for the offering was the role of Mr Cormack Lynch, an oil and gas expert?

A. Correct, because it was an oil and gas deal.

Q. Nonetheless, you did participate at some of the meetings at which the drafting of the offering circular was discussed, correct?

A. On the key issues, yes.

Q. And you discussed key due diligence issues with Mr Lynch?

A. Primarily with respect to the ownership.

Q. Yes, indeed.

In your witness statement at paragraph 9 you refer to, and indeed cite, page 16 of the offering circular, which we can look at in a moment. But just to clarify this, your evidence is that this statement reflected the understanding of Cleary Gottlieb, the lawyers who performed due diligence on the question of share ownership?

A. Correct.

Q. And the statement would also have reflected your understanding, is that right?

A. At that time, after their work, yes.

Q. And then let us look at the statement, and we can take it from paragraph 9 of your witness statement E3/11/73. It's the first two sentences which I'd like to focus on. These say that the companies owning 97 per cent of Sibneft, FNK, Firma Sins, Refine Oil and Runicom:

... 'are all privately held companies and have close connections with the current management of Sibneft. As such, more than 97% of the Company is

currently controlled by the Company's managers and a small group of private Russian investors.'"

Can you help me with this, please, who was the small group of private Russian investors?

A. I understand that it was the management of the trading company, so we couldn't explain that it was the management of Sibneft so we had to explain it in such a form that it was employees of the trading companies, but were all connected to Mr Abramovich.

Q. Can you be a little more specific. Who do you say were the individuals making up that small group of Russian investors?

A. They were individuals that worked for the trading companies that were alongside Sibneft. Again, this was I guess 14 years ago, I don't remember the names.

Q. You don't remember the names?

A. No, but they were employees, I remember that it wasn't -- they were employees of those trading companies, my understanding.

Q. If you go, Mr Tenenbaum, to paragraph 16 of your witness statement E3/11/77.

You say:

"I was aware of who the major shareholders were as a result of the work done in the Offering Circular ..."

A. Correct.

Q. So who were the major shareholders?

A. They were the managers -- well, primarily they were the managers of Sibneft at that time and the employees of the trading companies. But at that stage you could only see the four companies, and I think that what Cleary's did was went up all the way to who the registered shareholders were in Russia, but I'm reconstructing right now.

Q. Are you seriously saying that you do not know now, cannot remember now who were the major shareholders of Sibneft?

A. The major shareholders were the four companies, those were the shareholders. But in a Russian context, those companies were controlled by employees of the trading companies. So they were individuals in those trading companies. The names I don't remember, unfortunately.

Q. Now, just going to paragraph 20 of your statement, that's at page 79 E3/11/79, you say at paragraph 20 that after you joined Sibneft you:

"... explained to investors, when asked ... that the management were the main shareholders and that they controlled Sibneft."

A. Correct.

Q. And you worked in Sibneft until September 2001 when you moved to work for Millhouse, now MHC Services Limited,

in London?

A. Correct.

Q. So these were statements, we can assume, that you made on occasions between 1998 and 2001?

A. There were statements that I made until 1999 when I found out that Mr Abramovich was the only shareholder. Until then, I didn't know that.

Q. You're saying that, until 1999, you did not know that Mr Abramovich was the only shareholder. Wasn't that something --

A. No, I -- I thought it was the management.

Q. Wasn't that something that you would have wanted to find out when you joined the company?

A. I did, and I was told that it was the management.

Q. So it took a year, do you say, before --

A. It took, yes, about a year, when we set up the trust.

Q. And that was the first time that you say you were told the truth?

A. No, when I understood that he was the only shareholder. Again, in Russia, you don't ask those kind of questions. You assume that things are what they are, and then when I found out, I found out.

Q. Mr Tenenbaum, you tell us that you had left a relatively senior position at Salomon Brothers, correct?

A. Correct.

- Q. And that you were happy to join Mr Abramovich and Mr Shvidler because you trusted in their integrity.
- A. Correct.
- Q. But you felt unable, is this your evidence, to ask them who owned Sibneft at that time?
- A. At that time, the only interest I had was whether Mr Berezovsky was a shareholder. And I understood that the management controlled the company, and that was important for me, because the management that I met was Mr Shvidler, Mr Oiff, Mr Gorodilov, Ms Panchenko, and at that time it wasn't explained to me who the actual shareholders were but I understood it to be the management of Sibneft.
- Q. You were appointed head of corporate finance for Sibneft?
- A. Correct.
- Q. And you say you had no interest in knowing who in fact the owners of the company were?
- A. I'm not saying I had no interest. I had an interest, the interest that I asked. I was explained that it was the management. And when I got to know Mr Abramovich much more I understood the security reasons why he was saying those things. And in '99, when I think he had more confidence in me, I understood the full ownership structure of the company when I became the trustee.

Q. So you're suggesting that this person, whose integrity so attracted you that you wanted to join the company, in fact misled you when you first joined as to who the owners of the company were?

A. That's not correct, it's not misleading, because the management did control the company and did control the shares.

MRS JUSTICE GLOSTER: Are you making a distinction between ownership and control?

A. Correct, and that was very important for investors as well.

MR RABINOWITZ: All right. Are you suggesting that you didn't ask who owned the shares?

A. Well, during the due diligence on the Eurobond I knew who the registered shareholders were. Again, this is 13 years ago. Mr Abramovich was the founder of all those companies that were above the four companies, but at a certain point in time his employees became registered holders of those, controlled those shares. So I knew that he was the main shareholder, but the management was also involved in controlling those shares.

Q. And you didn't bother to ask who the other shareholders were? And I'm using that in reference to owners rather than controlling.

A. Again in the '97 due diligence it was seen who the registered shareholders were, so I understood that. It was the management of the company, so I saw that.

But in 1999, when we did the trust, Mr Abramovich was the only beneficial shareholder of all those structures.

Q. Can I just ask you this, when you use the word "control" in those answers, are you in fact talking about who the registered owners of the shares were? Is that what you're suggesting?

A. Well, the control point -- when the trust was set up, the management of the company were the trustees and the protector. So, to me, they controlled. So when we told the market that the management and Mr Abramovich controlled the full, let's say, 90 per cent block, that was what we communicated to the market place, and that was important that we communicated the full transparency of what was happening.

Q. I'll come back to that.

Can I just ask you this. You deal in your evidence with some valuation issues relating to Russian companies and, as you are aware, both companies -- both parties have filed a considerable amount of expert valuation evidence in relation to the valuation of Sibneft and Rusal. You, of course, are being called as a witness of

fact and are not called to give independent expert opinion and, in general, I won't be asking you about your opinion. But there are some matters that you deal with in your witness statement relating to valuation that I do want to ask you about.

Now, you produced a fifth witness statement dated 21 August 2011. It's in bundle E8, tab 1 E8/01/1. That was one day before Mr Bezant, who is Mr Abramovich's expert, produced a report served by Mr Abramovich. That report was served on 22 August, you're aware of that?

A. Yes.

Q. Mr Bezant refers to your witness statement in his report of 22 August. If you want to have a look at that, can you go to bundle G(C), volume 20/2, page 107 G(C)20/2.01/107

A. Which clause?

Q. If you look at paragraph 8.49, for example, you'll see that he refers to your witness statement, your fifth witness statement, which was served one day before this report. So presumably you had discussed your evidence with Mr Bezant before he served his report, and indeed before you served your witness statement, is that right?

A. No, that's not correct. I didn't discuss with Mr Bezant.

Q. Can you explain how it is that he was able to refer to your fifth witness statement the day before -- which was just produced the day before when he served his report?

A. Well, I gave my witness statement to Skadden and they coordinated with him. I was not allowed to speak to him.

Q. Can you turn, please, in your fifth witness statement to paragraph 25, it's at page 8. So E8, tab 1 E8/01/8.

A. Which clause, sir?

Q. Paragraph 25. You say here:

"For the reasons that I have set out above (predominantly the medium and long-term risk), no Russian businessman would have relied upon or used the DCF approach adopted by Mr Allen. His use of 'comparable multiples' also indicates some ignorance of the market as it stood. Mr Allen treats emerging market and Western companies as comparators, but completely disregards Russian market [comparators]."

So you rely upon what you describe as Mr Allen's complete disregard of Russian market comparators and use of emerging market and western companies as comparators as indicating ignorance on his part. Do you see that?

A. Yes, I do.

Q. Can you go to bundle G(C)2/01. It's G(C)2.

MRS JUSTICE GLOSTER: What page, please?

MR RABINOWITZ: I'm going to go to page 94 of the bundle
G(C)2/01.00/94.

Mr Tenenbaum, just so you know, you can see this on
the opening page, page 1, this is Mr Allen's report of
25 July 2011.

A. Mm-hm.

Q. Now, if you're at page 94 of the bundle, about halfway
down the page, do you see the heading "Comparable
Trading Multiples"? Just above paragraph 7.2.20.

A. Mm-hm.

Q. You see that Mr Allen explains the comparable companies
he has identified for the purposes of cross-checking his
DCF valuation, do you see that?

A. I don't see his multiples.

Q. You need to go over the page.

A. I don't see his comparable multiples.

Q. I said his comparable companies.

If you go over the page, you see he explains that
he's looked at comparable companies in Russia and other
emerging markets.

A. Mm-hm.

MRS JUSTICE GLOSTER: Would you give me the paragraph
number, please?

MR RABINOWITZ: If your Ladyship looks at paragraph 7.2.22,
at the top of page 95 G(C)2/01.00/95. Do you see

that, Mr Allen says:

"I ... identified comparable companies with Sibneft based on geographic location, under the following categories ... Russian oil and gas companies ... Oil and gas companies in Russian [sic] and other Emerging Markets ..."

Do you see that?

A. Well, in 7.2.22 he takes capital IQ, which has multiples ranging from -- over 150 times, so I don't see how he's looking at comparables.

Q. Well, let's go over to page 99 --

A. Where in Russia at that time it was two times.

Q. Go to page 99 if you would G(C)2/01.00/99.

A. 99?

Q. Page 99. Do you see the figure 16 at page 99, below paragraph 7.2.37?

A. Yes.

Q. You see that the red triangle shows the implied EBITDA multiple for Sibneft using the valuation from the discounted cashflow method.

A. But I don't agree with that, so...

Q. Right, but I'm just dealing with this, Mr Tenenbaum.

A. Okay, fine, that's fine.

Q. Do you see the grey squares in this figure?

A. Yes, I do.

Q. Those represent Russian market comparators, do they not?

A. Correct.

Q. Comparators which you say were completely disregarded?

A. Well, because Mr Allen used a -- I think he used many other companies in his analysis, so the average became very high, even if he used the Russian.

Q. Well, he didn't ignore them.

A. Well, you don't ignore them, but if you have, you know, 100 companies and only four of them are Russian then the average becomes very high, as you can see. 6 -- 4.7 multiple for emerging markets, EBITDA(?) of 4.7, Russia, at that time, the comparables for us was about 1.5 so that's a major, major difference.

Q. Well, your evidence was that he completely disregarded this. Can you also look on the graph --

A. Sorry, can I just comment, he disregarded it in his conclusions.

Q. Okay. But look at the graph, page 99 G(C)2/01.00/99.

A. I am.

Q. That marks the -- by reference to the blue circles -- companies which are from emerging markets. The group which we've seen includes Russian companies as well. And there is no comparison with western companies here, is there?

A. This is an emerging market comparison. But Russia was

an emerging emerging market.

- Q. So when you in your evidence suggested that he treats emerging markets and western companies as comparators, that was wrong?
- A. No, it's not wrong, because he is treating them as comparators, and he should be looking at Russian comparators primarily, because Russia at that time was very unique. Even today, Russia is the cheapest trading emerging market in the world. So it's interesting to look at other emerging markets, but if you're looking at a Russian valuation you must look at Russian companies.
- Q. Can I ask you, please, to go to paragraph 22 of your fifth witness statement, so that's the one at E8, you'll find it at page 7 of that bundle E8/01/7. You say here:
- "Absent individual buyers' considerations, in my opinion the price at which the free float of Sibneft shares traded in June 2001 is a reasonable indicator of its value then."
- By "its value" you're obviously meaning Sibneft's value?
- A. Correct.
- Q. Now, I made the point to Mr Shvidler when he gave evidence that there were a number of reasons why the price of free-floating Sibneft shares was not a useful

indicator of the value of the shares in which Mr Berezovsky and Mr Patarkatsishvili had an interest, and that included that scaling up the share price, which suggests a value for the company of only a little over \$1 billion, which I suggest is a ridiculous proposition, when this company was able to pay a dividend of \$612 million just a few months later. Do you want to comment on that?

- A. Yes, please. I think the whole approach is a little bit skewed because I think taking hindsight valuation approach is very misleading. At that moment in time, that was the value of the company in Russia. And to look at value even in a year's time and compare it at that time is completely misleading.

So when you look at multiple analysis and the other analysis of value in Sibneft at that time, that was what the market was prepared to pay, and we were trading, compared to other companies like Yukos, Tatneft, Surgut, we were in line with those companies. So that was the value that the market placed on our company.

When you say that when the company paid 600 million next year, that was next year, Mr --

- Q. It was in fact just a few months later, wasn't it?

A. Yes.

- Q. So one isn't applying hindsight there, the company was

obviously in a position where it was preparing to pay a dividend of half of what you say was its total value.

A. Correct, but it was paying most of its net earnings.

And if you look at valuations at that time, they were about one and a half times earnings. So when it was paying out all of its earnings in dividends, it was actually valuing itself at one and a half times of that dividend.

So in fact 600 million in dividends was valuing the company at 1 billion, because the market was valuing the company at that time based on those multiples, so you cannot say that it's a ridiculous value, that's actually a market value. The market was placing its value on the company at that time.

Q. Well, we'll have to disagree about that.

I also suggest to you -- to Mr Shvidler, and I'll suggest the same thing to you, that the foolishness of this proposition was also shown by the fact that just a year later Mr Shvidler was announcing the sale of 1 per cent of the company for \$100 million which gave an implied value for the company of \$10 billion. But you say that that also is to be ignored in valuing Sibneft?

A. As I said, first of all, that transaction happened at \$6 billion valuation. The 10 billion, I don't know where that's coming from. The actual transaction that

happened, implied value was 6 billion, but again that was much later. And in Russia every month counted, and you cannot just look at it today, looking at that time, and say that that company was undervalued. You cannot say that. It's impossible to say that.

Q. You say it was much later. It was just a year later.

A. And a year in Russia is a lifetime, because a year before that Sibneft was worth \$600 million.

Q. You see, Mr Tenenbaum, just as with Mr Shvidler, I suggest that your statement at paragraph 22 E8/01/7 is a good example of how you're willing to give wholly unrealistic evidence if you think it will help Mr Abramovich to win this case. That's true, isn't it?

A. I disagree with you 100 per cent. And if my Lady would like I can explain more if it's interesting.

It's a very interesting subject to understand how companies were valued in Russia at that time, and hindsight valuation, what Mr Allen is using and Mr Rabinowitz is using, is completely inappropriate because at that time that was an incredible amount of money. And dependent who was on the table at that time, there was nobody at that time that could actually afford to pay that kind of money.

So you cannot just look at it today at that time and say that company was undervalued. It is really

back-seat valuation.

If I ask you right now, Mr Rabinowitz, what is the right company to buy today, I don't think you can tell me because the market knows what the value of the companies are today. You don't know what is undervalued or overvalued because today investors know and place value on the company.

MRS JUSTICE GLOSTER: What about the other point that Mr Rabinowitz made to Mr Shvidler, I don't know whether you were in court.

A. Which one?

MRS JUSTICE GLOSTER: The point that you couldn't actually get anything from a market cap because that was based on the relatively few shares that were trading, and what one was looking at here in reality was a huge majority interest.

A. I'll come down a bit, I'll breathe.

You can manipulate a share price in a short term depending on liquidity, you can manipulate the share price of Exxon at the end of the day, but over a long term you cannot manipulate a share price. So even though it was illiquid relative, let's say, to Lukoil, the investors that bought Sibneft shares were investing lower amounts, smaller tickets, let's say, as opposed to the investors that were investing in Lukoil or Exxon for

example.

But the value that they placed on that stock was what it was worth. They wouldn't invest, let's say, \$100 million in a block of shares in Sibneft because they couldn't sell it, but they could invest a million dollars, and it would still reflect the value of Sibneft at that time, because if you compare Sibneft to Lukoil or to Surgut or to Tatneft or to others, they were in comparison. Because you would have an investor who was interested in Sibneft, if it was cheap he would buy it and the price would go up.

You cannot say just because it was illiquid that it wasn't reflecting market. On the contrary, it's just certain investors wouldn't invest. Like Fidelity, for example, wouldn't invest in Sibneft because they would need, let's say, a ticket of \$10 million to buy. But a small hedge fund who saw value would invest and would see value, and the price of Sibneft would reflect their view of what Sibneft was worth.

So you cannot say that liquidity affects value. It affects short-term, potentially, size of investments that somebody will make, but it doesn't affect value at all, I disagree completely. And in fact --

MRS JUSTICE GLOSTER: Okay, I think you've given me --

A. Okay, I'm sorry.

MR RABINOWITZ: Can I just pick up on that, I'm sorry, my Lady. Your Ladyship may have had enough of this but there's one thing arising from it.

Are you seriously suggesting, Mr Tenenbaum, it sounds like you are, that you can extrapolate up from the value of a stake within a 12 per cent free float in order to ascertain a value for a 44 per cent or a majority or a substantial majority block?

A. I would even say you have a discount at 44 per cent at that time, because if you're selling large minority blocks, and that's statistics, you actually approach -- you get a discount on the block. And 12 per cent at that time had a representation of the minority value of the company. And again, from history, my Lady, you have premiums of maybe 20 to 30 per cent when companies buy other companies, but historically 90 per cent of those investments don't pan out because you overpay.

Because what does it mean to pay for control? You think you can run the company better so you overpay a little bit than what the company is valued at but at the end it doesn't come out because you're not going to be managing the company better than the current management is managing.

MRS JUSTICE GLOSTER: I see.

MR RABINOWITZ: Sorry, Mr Tenenbaum, are you suggesting that

the notion of a premium for control is a delusion and that there should be no premium for control?

A. I think 80 to 90 per cent of mergers and acquisitions show that they don't bring value. When you buy a company at a premium you're assuming that you can manage it at a better return, and what history has shown is you don't because you usually buy at a market that is high, because you can raise money on the market, and therefore you overpay than what the market is trading at, and in reality you don't realise that return for your investors.

So usually when companies buy majority of other companies they pay, let's say, 30 per cent premium. If you look at historically, that premium is never realised to shareholders because they overpay.

So your --

MRS JUSTICE GLOSTER: We've got the point.

A. Okay, sorry.

MR RABINOWITZ: Mr Tenenbaum, can I ask you, please, to go to paragraphs 63 and 64 of your third witness statement at E3, tab 11, page 96 E3/11/96. Can you ask you to read paragraphs 63 and 64 to yourself, please. (Pause)

Just 63 and 64. (Pause)

A. Okay.

Q. What you seem to be saying here is that you concluded at

that time that the \$1.3 billion payment was to disassociate Mr Berezovsky from Sibneft. That's what you seem to say at paragraph 64, correct?

A. At the time of the payment, yes, that's what I -- that's what I assumed, yes.

Q. All right. Let's look, if we can, at evidence you have previously given. Can you go, please, to bundle J2/3 and go to tab 32, and page 55 J2/3.32/55. Look at what you were saying at paragraph 24.

A. Mm-hm.

Q. "I also knew about the payment of US\$1.3 billion connected with a settlement with [Mr Berezovsky], which I understood from Mr Abramovich to have been to compensate Mr Berezovsky for the fact that he was no longer getting the originally-anticipated payments to help fund ORT."

Now, has your memory improved over time in relation to this point, Mr Tenenbaum?

A. No, because what I'm saying in my third witness statement is that at the time of the payment, this is talking about 2003, and at some point in time that's what Mr Abramovich explained to me. But at that time he did not explain it to me when the payment was made in 2000. Yes, 2000. So it was three years -- it was between 2000 and 2003 that Mr Abramovich had, I guess,

communicated that point to me, so it's nothing -- it's nothing to do with memory, it's just the time of dates.

Q. Sorry, can we just understand that.

You say in paragraph 64 that you "ultimately concluded" that this was the reason for the payment. That's what you say at paragraph 64.

A. Where is it?

Q. Paragraph 64, page 96 of E3, tab 11 E3/11/96.

What is the date of that "ultimately" that you have there, because it doesn't seem to be that that would have stopped before 2003?

A. No, that's my ultimate understanding. What I'm saying here is what Mr Abramovich told me.

So my ultimate understanding was that it was to finish association with Sibneft, but on paragraph 24 I talk about what Mr Abramovich told me. It's my understanding eventually of what the payment was for.

Q. So your evidence is that, two years later, Mr Abramovich told you a story about why he made this payment in 2003, but that subsequently, after that, you came to a different conclusion. Is that right?

A. That's not what I'm saying.

Q. All right. What are you saying?

A. What I'm saying is that I'm not saying it happened two years later or it happened before that. That's what

Mr Abramovich told me at 2003 was my reference point, so I don't know whether he's told me that when the payment was -- after it was made or at 2003.

Q. But it hadn't changed by 2003, seems to be the implication of paragraph 24.

A. What he told me?

Q. Well, your understanding.

A. No. What he told me was this, and my understanding was that it was to disassociate ourselves from Mr Berezovsky. So, to me, these statements are consistent. This is what Mr Abramovich told me, and my ultimate understanding was that he stopped associating with Sibneft. To me it's consistent.

Q. And when do you say Mr Abramovich told you that the \$1.3 billion payment was to compensate Mr Berezovsky for the fact that he was not getting payments to help fund ORT? When do you say that would have been?

A. It was before 2003, between 2000 and 2003. I cannot remember the date.

Q. You see, Mr Tenenbaum, I suggest that this inconsistency, and I suggest there is an inconsistency in your statement, reveals the fact that you are not telling the truth about this.

A. I disagree with you. It's consistent to me because I wrote this.

Q. Can I move on then to consider with you your evidence in relation to Rusal. Now, you tell us in your third witness statement that you were involved in the acquisition of the aluminium assets by Mr Abramovich in early 2000 although you say you recall being on the periphery of those transactions.

A. Correct.

Q. And perhaps we can just consider together the nature of your involvement with this transaction.

A. Okay.

Q. You say, looking at paragraph 34 of your third witness statement, it's page 84 E3/11/84.

If you're there, you say here that you recall Mr Shvidler calling you into meetings a few times to explain particular points relating to the aluminium acquisitions. Is that right?

A. That's my recollection, yes.

Q. And you say that, again, still at paragraph 34, although you cannot recall precisely what was discussed, you can remember the general topics of discussion and that they included the overall transaction structure, correct?

A. It was primarily to do with share transfers, that was what people were concerned with.

Q. Well, you say "overall transaction structure". We know that the aluminium acquisitions were structured offshore

using four offshore companies, and you would have known that presumably?

A. Yes.

Q. And you would have known also that those four offshore companies included two BVI companies, a Gibraltar company and a Panamanian company?

A. I would have known at that time? No, I don't remember.

Q. And you would have known also that there were, in all, ten contracts?

A. Again, this is now, looking at it, I don't know if I saw those contracts. I can't recall seeing those contracts.

Q. Well, you think you were dealing with overall transaction structure and you didn't see the contracts?

A. My involvement was primarily to assist Mr Shvidler in areas that he wanted me to assist him with. I had a team that was dealing with it, that were much more capable of doing the actual documentation and the administration of it. I was not doing that.

Q. But if you were dealing with the overall transaction structure, surely you would have not only known that there was a use of offshore companies but also that those contracts were all expressly subject to English law?

A. I would have seen it at that time, yes.

Q. But you say now that you cannot recall the detail of

those discussions other than that they were about the overall transaction structure, and I think that reflects something you've repeated now.

Then you also say, still at paragraph 34 E3/11/84, that you recall attending some meetings with Mr Shvidler where Mr Chernoi and Mr Bosov were present. Correct?

A. Correct.

Q. And Mr Chernoi and Mr Bosov were, of course, two of the four sellers of the aluminium assets, weren't they, Mr Tenenbaum?

A. They were in the agreement of February 10th, I think, yes.

Q. So these meetings with them, which you attended with Mr Shvidler, were presumably part of the negotiations which led up to the ultimate sale and purchase of the aluminium assets in mid-February 2000, it would seem logical, would it not?

A. It's not a correct misrepresentation -- mis -- representation that I was participating in the meetings. Mr Shvidler would call me, I would come in, he would ask me a question, and I would leave. I never was participating in those discussions, those were not discussions that I would participate in.

Q. So are you saying that when you say in your evidence you recall attending some meetings, what you're saying is

you walked in, gave an answer and walked out?

A. Well, if you read what I say, I say:

"... Shvidler calling me into meetings a few times ..."

I went in, he asked me a question, if I had an answer I answered, if not I left. I researched it, I came back, and I gave him an answer and I left.

MRS JUSTICE GLOSTER: What sort of points were you being asked to assist with?

A. I think the primary issue was because the shares were under -- problematic shares, they were issuing -- I think they were concerned how to ensure that title was clean. I'm just reconstructing that, looking at the documents, because there weren't any other substantive issues that were in those agreements, reading them right now. The only issue that I can see myself participating in is -- with my staff, was to look at the share transfer issues, to make sure that the shares were clean, or as clean as we could get them.

MR RABINOWITZ: What were the problems -- what was problematic about the shares which made this an issue in which your assistance was sought?

A. Again, I can't remember what exactly we were doing, particularly to these shares, but some of them were in bankruptcy proceedings so there were certain legal

issues that Mr Shvidler would ask me and that I would have to go and research with my staff.

But I can -- I would like to say that I was not in those meetings negotiating with those individuals.

Q. Okay, so that's the position in February 2000. Let's just look then at the position in relation to March 2000, turning to the formation of Rusal.

You tell us at paragraph 35 of your witness statement that you were told at some point, and this must be in early March 2000, about the merger discussions that had taken place between Mr Abramovich and Mr Deripaska at the White House, followed by the Kempinski Hotel, and the meeting in Mr Abramovich's dacha in Sareevo Village, correct?

A. I probably was told that by Mr Shvidler.

Q. You also tell us, this is at paragraph 38 of your statement E3/11/85, that you were involved in some of the meetings in London attended by Ms Panchenko, Mr Hauser, his partner Mr White, and Mr Deripaska's man, Mr Mishakov, during the period 10 to 12 March 2000, is that right?

A. Again this is a reconstruction, I don't really remember those meetings.

Q. Well, Ms Panchenko says that you were at these meetings. You don't dispute that, do you?

A. Well, as I say, I probably was.

Q. Okay. You also tell us that, having returned to Moscow on 12 March 2000, you also have some recollection of meetings with representatives of Mr Deripaska at the Sibneft building during the week of 12 March 2000.

A. Yes, I remember it was long nights in the Sibneft building. We were downstairs, and I think the full night we were drafting documents. My team was drafting, I was there helping in whichever way I can.

Q. And these discussions would have taken place, what, in the days immediately prior to the execution of this share purchase and sale agreement. That is right, I think, given what you've just said and given that we know the document was executed on 15 March 2000?

A. Correct.

Q. So these discussions in Moscow, which you were involved in with Mr Deripaska's representatives, would have been to do with the finalisation of the 15 March 2000 agreement?

A. It's logical to assume, I guess.

Q. And you also say in relation to these discussions that you recall some discussion with Mr Mishakov over the share transfer issues?

A. What stays in my mind is the discussions and meeting with Mishakov, yes.

Q. Now, you say that although you were clearly involved in the 15 March 2000 agreement, because it was in English, and dealt with shareholder arrangements, you were not responsible for the details of the agreement and that you delegated those to Mr Osipov and Mr Schneider, correct?

A. Correct.

Q. Can you just tell us who Mr Osipov and Mr Schneider are?

A. Mr Osipov worked in my department, he was very -- you know, he was my right-hand man and I delegated a lot of things to him, that's my style of management, I delegate. And Mr Schneider was a lawyer that we used for consulting reasons. He was an outside lawyer that we sometimes used.

Q. Presumably, I think it reflects in the answer that you've just given, you delegated this task of dealing with the detail of the transaction to them because you regarded them as people you could trust?

A. I could trust and they could do it much better than I can. I could deal with some of the issues of the shareholder agreement which I thought we were going to be doing, which potentially required my input, but they were much smarter than I was in dealing with the things that they were dealing with, and I was really helping them at that time.

- Q. And so while they would have been involved in the detailed work of getting the agreement set down in writing, it was you who was overseeing their work, was it not, that was your principal task?
- A. My principal task was responsibility to Mr Shvidler, and Mr Shvidler asked me to make sure it happened and -- the people that were really doing it was Mr Osipov and Ms Khudyk, and they were the real sort of brains behind getting it done. I was just there to make sure that things worked efficiently and to make sure that things happened on time, because there was such a time constraint.
- Q. So you were, as I suggested, overseeing their work, correct?
- A. I was responsible ultimately, yes.
- Q. And you were also reporting back to Mr Shvidler, presumably both with information and for instructions, correct?
- A. Correct, if there were any issues.
- Q. Now, I don't think you suggest in your evidence that Mr Osipov or Mr Schneider didn't properly carry out their task, or that you in your oversight role allowed anything to go wrong with the recording of the 15 March 2000 agreement, do you, Mr Tenenbaum?
- A. In the time that we had, which were a few days, no

diligence, doing it overnight, we did the best we could. And if you look at these documents, I would call them a hybrid between Russian documents and English documents because there was a semblance of representation of warranties but there weren't any. There was a semblance of a shareholders agreement but there wasn't, clearly, because we didn't have time. And the primary focus was really the share transfer which then I left to Mr Osipov and Ms Khudyk, who were much more competent dealing with those issues so I relied on them, and I took their competent that they would do it right -- the right job.

Ultimately I was responsible, of course, for it, but the provisions there are very broad and very general and, in my experience of negotiating contracts, you sit down and you negotiate and you flash out issues and you identify due diligence points. But in this instance there wasn't that, so it was a very, very rough and ready agreement. And so my involvement actually was very limited.

Q. Now, you tell us in your evidence, Mr Tenenbaum, that you are in general terms a cautious man and are known to be so, is what you say. Is that right?

A. I think so, yes.

Q. And although that is evidence that you give in the context of talking about the position in 2004,

presumably that is also true of the position in 2000,
that you were still then a cautious man?

A. The 2004 refers to, I'm sorry?

Q. Well, you don't need to know why you were saying that in
2004 --

A. Ah, I'm cautious from my birth, yes.

Q. All right.

You also tell us, this is paragraph 46 of your third
witness statement E3/11/89, that the 15 March
agreement was signed by Mr Deripaska of GSA (Cyprus)
Limited and Mr Andrey Tschirikov for Runicom Limited,
and that you initialled each page of the 15 March
agreement, is that correct?

A. Correct.

Q. And you say, this is again at paragraph 46 of your
statement, that you signed each page because you were
the senior person there and spoke fluent English. Yes?

A. Correct.

Q. And, as we have just heard, you also had overseen the
preparation of the 15 March 2000 agreement, correct?

A. Correct.

Q. And indeed you'd been involved in discussions with
Mr Deripaska's representatives both in Moscow and in
London during the previous ten days, correct?

A. It appears so, yes.

- Q. Just so that we're not at cross-purposes, the 15 March 2000 agreement was the agreement pursuant to which it was agreed to pool various offshore companies and the underlying aluminium assets and ultimately to form Rusal, correct?
- A. It was the first stage, yes.
- Q. And it was one of the principal agreements that ultimately led to the formation of Rusal?
- A. Correct.
- Q. Given what you say about you being a cautious man, I take it that before initialling each page of this document, you would have ensured that you were at least generally familiar with what the agreement provided for?
- A. I was looking at risk factors, and so from a risk factor point of view I was happy with it, I wasn't necessarily reading every word because every word was broad, so I was focusing on the risk factors.
- Q. Can we just please have a look at the agreement. Can you go, please, to bundle H(A)18, page 124 H(A)18/124?
- So this is the share purchase and sale agreement which you -- we see you initial each page and, as you can see, it's the contract under which Mr Deripaska's company, GSA (Cyprus) Limited, acquired 50 per cent of the shares in the four companies that had been used by Mr Abramovich's side to purchase interest in the

aluminium assets at KrAZ, Bratsk and Achinsk. You'll have to forgive my pronunciation.

Can I ask you please to go to page 138 where you'll see schedule 1 H(A)18/138.

A. Yes.

Q. You see there's a reference there to the companies, and under that one has listed Runicom Fort Limited, Galinton Associated Limited, Palmtex Limited SA and Dilcor International Limited. Those were the companies that had been used by Mr Abramovich to purchase -- or Mr Abramovich's side, to purchase interests in the aluminium assets in February 2000, that's correct, isn't it?

A. Yes.

Q. And just if you look then at page 124 of the document H(A)18/124, you will see that the contract says:

"'Companies' [as defined] means those companies more particularly described in Schedule 1, Part I."

So that's the four companies that we've just seen, correct?

A. Correct.

Q. Can I then just ask you to go to clause 2.7, page 127 H(A)18/127, and just read it:

"The Vendor acknowledges and confirms that the Transfer Price has been calculated on the basis of the

Companies being the beneficial owners of the Securities as at the Transfer Date..."

Then it goes on with some detail.

The transfer price we know was, certainly at this stage, \$400 million. That's right, isn't it?

A. Yes.

Q. And that was calculated on the basis of the companies, which are here referred to, having the interests set out and referred to at paragraph 2.7. Take that from me.

A. Okay.

Q. Now, again, there is no dispute that Runicom Limited, the vendor company in this contract, is an Abramovich-controlled entity?

A. Correct.

Q. Can I ask you, please, to look at clause 2.1 at page 126 H(A)18/126. 2.1 says this:

"Subject to the terms and conditions of this Agreement, including but not limited to Clause 2.8, the Vendor [and that's obviously Runicom Limited] shall sell the Shares to the Purchaser [that's Mr Deripaska's company] on its behalf and on behalf of the Other Selling Shareholders with full title guarantee, and the Purchaser shall [pay the purchaser price]."

So you see there a reference to the sale being on behalf both of Runicom Limited and on behalf of the

other selling shareholders?

A. Right.

Q. Then if I can ask you just to go back a page to page 125

H(A)18/125, do you see the definition of "Other Selling Shareholders"?

A. Yes.

Q. "'Other Selling Shareholders' [are defined to mean] those other persons who together with the Vendor are the legal and beneficial owners ... of the shares (both in registered and bearer form) of the Companies..."

A. I see that, yes.

Q. Then just one final provision if I can ask you about, can you go to clause 6.1.1, you'll find that at page 131 H(A)18/131. "The Vendor", that's Runicom Limited -- sorry, are you there?

A. Yes.

Q. "The Vendor represents and warrants to [Mr Deripaska's company] that as at the Completion Date:

"The Vendor and the Other Selling Shareholders are together the legal and beneficial owners of 100 per cent of the shares [in] the Companies ..."

And we know the companies are the four companies listed in schedule 1, Okay?

A. Mm-hm.

Q. So it would appear that Runicom Limited did not own the

companies outright but only with the unidentified other selling shareholders, do you agree?

A. No, it's not correct. You can interpret it that way but that was what the other side drafted.

Q. Sorry, Mr Tenenbaum --

A. Can I explain?

Q. Do you agree that that is what the provision suggests?

A. Well --

Q. You can say that someone else drafted it but do you agree that that is what the provision suggests?

A. Can you repeat that again, please, sir?

Q. It would appear that Runicom Limited did not own the companies outright but only with these unidentified other selling shareholders?

A. Well, I need to explain then because I can't agree or disagree then.

Q. All right.

MRS JUSTICE GLOSTER: Right, explain.

A. The other companies, the four companies that owned the assets were bearer companies. Runicom was a registered company of which Mr Abramovich was the owner. So the other side would need a warranty from Mr Abramovich if I were to confirm that he was the only owner because these are bearer companies. You cannot confirm with the four days that we had to -- or two/three days that we

had to draft these documents to completely fulfil their obligations to confirm that there was only one shareholder. So this is a very broad and encompassing provision on their side which takes into account that there is no personal guarantees in this and there's really no representation of warranties in this document. So in a sense, this is a provision from the other side to capture any issues with respect to the bearer company shares and no ability to do any diligence on those shares.

MR RABINOWITZ: And it's a provision in a contract to which you agreed?

A. Correct.

Q. And it suggests, does it not, that certainly so far as the other side were concerned, there was at the very least a possibility of other selling shareholders?

A. As I said, we never -- I never discussed that with the other lawyers with the other side. We were drafting these documents over the last three/four days. This was not an issue that I focused on because there was a very broad provision which they asked for and I agreed. There was no risk to us. If I was to challenge this provision and to try to explain there's only one shareholder, I wouldn't be able to actually guarantee it because these are bearer company shares and they would

not be able to do any diligence on those companies. So I would have to have Mr Abramovich give a warranty and a guarantee and I did not want to do that, so I agreed with this broad provision.

Q. Is it not more likely, Mr Tenenbaum, that the reason that this contract provided for the possibility of other selling shareholders reflected the fact that in the preliminary agreement -- you know what I mean when I refer to the preliminary agreement?

A. Yes, yes.

Q. -- that referred to Mr Abramovich as having partners?

A. Again, I understood that there was a party and the partners were to do with the companies. Again, at that stage I didn't understand that point but I saw the party's definition and, to me, it made sense that it was the companies that were together with our companies coming into the venture.

Q. I'm not going to ask you about that.

Why did you not want Mr Abramovich to give a guarantee of his sole ownership?

A. There was no need for it. They didn't ask for it.

Q. I thought you were saying that this was the alternative to doing that?

A. That was in my -- my reconstruction of this alternative. I didn't do that because there was no need for it.

Q. Very well. We have your evidence about that then.

So that's the share purchase and sale agreement with which you were involved.

Then there were some other agreements that also related to the formation of Rusal, weren't there, which you mention in your witness statement? Can you go to paragraph 47 of your witness statement E3/11/89. One of the other agreements that you mentioned to do with the formation of Rusal here is the amended and restated share purchase and sale agreement dated 15 May 2000?

A. Yes.

Q. And that is again an agreement in relation to which you say you had some involvement, that's right, isn't it? Although again I think you say that was primarily limited to overseeing the work of Mr Osipov and Mr Schneider?

A. Correct.

Q. Just before I move off the last agreement that we're talking about, it would have been very easy to prove ownership of bearer share companies, would it not? You could have just produced the bearer shares?

A. But how can you prove who is the owner of those bearer shares?

Q. You establish that they're in your possession.

A. I suppose so, yes, but how could you give a warranty on

that?

Q. Okay. Now, that's then the amended and restated share purchase and sale agreement. You also tell us that, as with the previous 15 March 2000 agreement, you again initialled each page of the amended and restated share purchase and sale agreement, correct?

A. Correct. Yes.

Q. And again, you being a naturally cautious person and known by all to be so, you would have ensured that you were broadly familiar and comfortable with the detail of what was contained in this contract?

A. You can say that, yes.

Q. And in addition to that agreement which you initialled, there were also two protocols to the share purchase and sale agreement of 15 May 2000 which you also initialled, correct?

A. Correct.

Q. Again, can we take it, you being a cautious person, that you would have ensured that you were broadly familiar and comfortable with those agreements before you initialled them?

A. I didn't see any issues in those agreements, so yes.

Q. And can we just look at paragraph 50 of your witness statement, please E3/11/90. You also say here that you can recall providing general advice about what

investors would expect if Rusal was later listed on an international stock exchange. Is that right?

A. Yes.

Q. And you say that because of your involvement at that stage, that may be why you recall the names of the four BVI companies: David Worldwide, Kadex, Valeford and Foreshore which, together with Dilcor and Galinton, owned the entire share capital of Rusal in December 2000, is that correct?

A. That's correct, yes.

Q. You also tell us -- and this is still in paragraph 50 -- that you can also recall that the six BVI companies which owned Rusal all had bearer shares which you advised would not be suitable if Rusal was ever listed, correct?

A. Yes. I explained it to Mr Shvidler that that wasn't the right strategy to take if you were going to list the company.

Q. And still at paragraph 50, you also tell us that, although you had not been closely involved in the registration of Rusal on 25 December 2000, you were involved in the negotiations which eventually led to the signing of the Rusal shareholders agreement on 9 February 2001, is that right?

A. That's the only document or the only sort of

participation or involvement that I recollect with any significance because it required my input, direct input.

Q. We'll come back to that, Mr Tenenbaum.

A. Mm-hm.

Q. Going forward in time, if you look at paragraph 79 of your third witness statement, that's at page 102 E3/11/102, you also tell us that you were also aware of the establishment and subsequent registration on 7 May 2003 of Rusal Holdings Limited, correct?

A. Yes. My recollection is that I think I spoke either to Mr Shvidler or actually he asked me to go to see -- to present to the board because I thought that the BVI -- even the registered form wasn't acceptable for an international listing. But my advice wasn't followed, as the BVI -- bearer companies weren't followed so... That's why I remember that, because I either -- I don't remember whether I actually went to the board meeting but I recommended to Mr Shvidler that it shouldn't be a BVI company.

MRS JUSTICE GLOSTER: What, because that wasn't acceptable on an international placing?

A. You couldn't list it, no.

MR RABINOWITZ: And this is right, isn't it, you were also aware that there was an internal restructuring of the Rusal group ownership later in 2003 although you say

that you are not now familiar with the details, is that right?

A. My understanding that after May 2003 the structure -- the holdings were restructured to put it into a registered form, because Mr Deripaska wanted to do a listing, eventual(?) listing, but again I didn't understand how they could do that with a BVI company, but I'm just reconstructing now. I think the primary driver for them was tax as opposed to listing, which eventually they did many years later without our involvement.

Q. Just to be clear, Mr Tenenbaum, your evidence is that you were aware that there was this internal restructuring of the Rusal group ownership in 2003 --

A. Yes, I just --

Q. -- although you are not now able to recollect the details?

A. Correct, I was just not participating in the restructuring itself, but I knew that it would be restructured, yes.

Q. Okay. Now, in addition to all of this, you also had some involvement, did you not, in both the first and second Rusal sales, and let us just see if we can be clear about what you say your involvement was in those transactions.

So far as concerns the first Rusal sale, that's the one in September 2003, you say that although you were not significantly involved in this transaction, you did provide some valuation guidance about it?

A. My recollection, I may have -- Mr Shvidler may have asked me to help him to get some analysis done and I would have done that.

Q. And so far as concerns the second Rusal sale in 2004, as I understand your evidence, you acknowledge that you were involved in this, and indeed you say that you were a conduit between the lawyers and Mr Abramovich and Mr Shvidler, but you say that you recall very little of the matters referred to regarding the documentation because they were largely technical and did not call for any particular expertise. Is that right?

A. It's correct, but if I can comment, I mean, I only remember the warranties that we were asked to give and Mr Shvidler -- and Mr Abramovich had to sign, and that's why I was asked, maybe by Ms Panchenko, maybe by Mr Shvidler, to assist in that. But I was already living in London dealing with Chelsea so I wasn't necessarily dealing -- on that particular point I remember assisting, yes.

Q. Very well.

A. Because it had to do with Mr Abramovich signing so they

asked me to help.

- Q. Now, I want next to ask you a few questions relating to the Curtis notes, Mr Tenenbaum, by which I mean the notes apparently taken by Mr Curtis of a meeting which you are recorded as having attended and which you will find the notes for at bundle H(A)59, page 110.001 H(A)59/110.001. We also have a typed-up version of those at 110.005 H(A)59/110.005.

Now, I'm not going to ask you to read them just yet but it is worth having them available.

- A. Mm-hm.

- Q. Perhaps we can begin by just seeing what is common ground between us in relation to these notes. You accept, I think, that you visited Mr Patarkatsishvili in Georgia in the summer of 2003, you say on 25 August 2003, is that right?

- A. Correct.

- Q. And we also now know that Mr Curtis was also in Georgia at that time -- perhaps I can just show you this. If you go to bundle H(A)62, page 234.003 H(A)62/234.003, this is an extract from Mr Curtis's diary and you can see, if you look on the left-hand column, 21 August, that he flew out to Georgia on that day. It looks like he flew from Ibiza on Mr Berezovsky's plane, do you see that?

A. I see it.

Q. You can then see from the entry on 22 August H(A)62/234.002 that Mr Fomichev, certainly according to Mr Curtis's diary, also appears to have been in Georgia at that time, you see the reference to Ruslan?

A. Yes.

Q. And indeed Mr Curtis's diary keeper has made a note:

"Meeting Ruslan ..."

That's Mr Fomichev.

And I think it says "Padre" but it presumably is Badri, that would be Mr Patarkatsishvili. Do you see that?

A. Yes, I do.

Q. That was going to be on 22 August. You can see from this that Mr Curtis was due to stay in Georgia over that weekend and to fly back on 26 August again on Mr Berezovsky's plane. Do you see that?

A. I don't see the 26th.

Yes, I see.

Q. All right. In fact, if you go over the page again to H(A)62/234.005, we in fact have a ticket stub from Mr Curtis's boarding ticket for the BA flight from Pisa to London.

A. Mm-hm.

Q. As you can see, it appears that Mr Berezovsky's plane

was going to take him to Pisa. Okay? Your evidence, tell me if this is right, is that you recall meeting an English or perhaps an American person at Mr Patarkatsishvili's house on 25 August 2003 who you accept could have been Mr Curtis, correct?

A. Yes, it was an English-speaking person, yes.

Q. And that's at paragraph 89 of your witness statement E3/11/105. You also say, and again this is at paragraph 89 of your witness statement, that you recall that Mr Fomichev was present when you were there, correct?

A. Correct.

Q. You explain at paragraph 89 that you had met Mr Fomichev before and that you knew him slightly, correct?

A. I knew how he looked, yes. I never had dealings with him.

Q. And you obviously also knew Mr Patarkatsishvili at that stage, didn't you, Mr Tenenbaum? You'd first met him around the time you joined Sibneft in the late 1990s?

A. I met him later when I joined, but yes, I knew who he was of course.

Q. You can put bundle 62 away -- I think someone has taken it away for you, very efficient.

Can we then just look at the handwritten notes from Mr Curtis, they're at 001 of H(A)59 H(A)59/110.001.

Now, you can see at page 001 that someone has put a post-it note on the handwritten notes in the middle of the page and that says:

"Bardrey [that's Mr Patarkatsishvili], Ruslan [that's obviously Mr Fomichev] + Abramovich's man meeting notes (vitally important)."

I don't think there's any doubt that the reference to "Abramovich's man" is a reference to you, Mr Tenenbaum. And I say that because if you look at the card at the top left-hand corner, the top left-hand side, you can see that someone has written your name "Eugene Tenenbaum" there, do you see that?

A. I see it, yes.

Q. And the fact that Mr Curtis -- never mind that.

So I think we can agree that there was a meeting or a gathering, if you prefer, in Georgia on 25 August 2003 at which you were present, Mr Patarkatsishvili was present, Mr Fomichev was present and that certainly it's likely that it was Mr Curtis who was present?

A. Looks like, yes.

Q. This is right, isn't it, while you had already known Mr Patarkatsishvili for a while, and indeed you had known Mr Fomichev, you had not previously met with Mr Curtis?

A. No, never met him.

Q. Therefore to the extent that the Curtis notes suggest that the four of you were in Georgia, I'm not getting into what you discussed at the moment yet, that appears to be accurate, doesn't it, Mr Tenenbaum?

A. That we were there? Yes, it's accurate.

Q. And so the only real dispute is really whether a conversation that Mr Curtis has recorded as taking place on these cards really did take place. Is that right?

A. Correct. A serious dispute.

Q. Now, Mr Tenenbaum, you have also dealt with this meeting with Mr Curtis in Georgia in your second witness statement in these proceedings?

A. Yes.

Q. And I wonder if we can just turn that up?

MRS JUSTICE GLOSTER: Just before we go there, where do I see the June date on the handwritten notes?

MR RABINOWITZ: You don't see a June date, my Lady. There is no date saying that this meeting was in June written on the notes. Someone who has put this file together has put "June 2003" there. But I think it's common ground that this meeting would have been in August.

MRS JUSTICE GLOSTER: Because of the travel documents --

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: -- of Mr Curtis.

MR SUMPTION: And indeed Mr Tenenbaum's own travel documents.

MRS JUSTICE GLOSTER: Yes, absolutely.

MR RABINOWITZ: Now, can I ask you, Mr Tenenbaum, please, to go to your second witness statement in these proceedings. Do keep your third witness statement available. That's at bundle J2/3, and you should go to tab 32, please J2/3.32/49.

A. Yes.

Q. You should have there a copy of your second witness statement. You'll see it's dated 28 October 2009.

Just to put this into context, Mr Tenenbaum, this was the witness statement that you swore in support of Mr Abramovich's application to strike out Mr Berezovsky's case. Do you remember that?

A. Correct.

Q. And you made this statement after the Curtis notes had been produced in the context of that application?

A. Correct.

Q. And can I ask you, please, to go to paragraph 15 of this statement which you'll find at page 53 J2/3.32/53.

Now, you say at paragraph 15:

"When I read what are said to be Mr Curtis's notes of a meeting that I am supposed to have attended, not in August but in early June that year, frankly I was

stunned. At no time did I take part in any such discussion. As I have mentioned, barring [a] short tour of the house, I spent my time outside where I had some food and the usual small talk with some of the guests."

You then go on in paragraphs 16 to 22 J2/3.32/53 of the statement to make four points in addition to the fact that you have no recollection of the discussion as to why you think it unlikely that there was such a discussion. Do read, if you would like, paragraphs 16 to 22, you're probably familiar with them, but perhaps I can just summarise for you what are the four points that you make.

You say first that, given your experience and involvement in the Rusal transaction, you had no expertise nor any great familiarity with the subject matter of the conversation. That's the first ground you give and that you will see at paragraphs 16 to 19.

A. Yes, I do.

Q. You say, secondly, and this is at paragraph 20 J2/3.32/54, that you would not discuss Mr Abramovich's private affairs in front of people you had not met before.

A. Correct.

Q. And then the third reason you give, this is at paragraph 21 J2/3.32/54, you say that you do not

understand the context in which this meeting is meant to have taken place.

A. Correct.

Q. And fourth, this is at paragraph 22 J2/3.32/54, you say there would have been a language barrier, correct?

A. Correct.

Q. And perhaps we can just consider each of these points in a little further detail.

A. Okay.

Q. Can we start with your first point, that the conversation regarding Sibneft and Rusal was not your area of expertise and you didn't have any great familiarity with that.

A. Can we read what I said, please? Which sections are you referring to?

Q. Paragraphs 16 to 19 J2/3.32/53.

A. I know but which particular points are you saying? I'd just like to make sure that I'm getting the language right.

Q. Read paragraphs 16 to 19 which I've tried to summarise for you as suggesting you were saying you did not have any expertise nor any great familiarity with the Rusal transaction which was the subject matter of the discussion.

A. What I say is:

"I [didn't perform a] direct role in relation to the acquisition or establishment..."

Q. Indeed, that is what you say.

A. Correct so I never had a role with -- at the level of Mr Patarkatsishvili, that is correct. And what else --

Q. Let's just look at what your role was. You say there that you didn't have any direct role and you give this as a reason why this conversation could not have taken place.

A. Correct.

Q. Now, to be fair to you, Mr Tenenbaum, you've rowed back slightly from that in your third witness statement. That's right, isn't it?

A. No, I haven't.

Q. All right. Well, let's just have a look at that. If you go to paragraph 95 of your third witness statement, that's at page 107, bundle E3 E3/11/107.

A. Yes.

Q. You see, whereas previously you'd said:

"I have not performed any direct role in relation to the acquisition or establishment of either Rusal or Sibneft."

What you're now saying is:

"As noted above, I did not perform any role in relation to the acquisition or establishment of Sibneft,

and my role in relation to Rusal was very limited."

A. Correct.

Q. So you now at least accept this, as you indeed have to in light of the evidence we've just looked at, that you did have a role in relation to the acquisition or establishment of Rusal, that you were indeed involved in those transactions although you now try to say that it was very limited. Is that right?

A. Can I explain, please? What I meant to say in paragraph 9 --

MRS JUSTICE GLOSTER: Yes, please do.

A. This was in the context of the meeting that I was -- that I had with Mr Patarkatsishvili. So when I say I had no direct role, the one, I guess, word that is potentially missing to make it very clear is that I had no direct senior role because I never met with, for example, Mr Patarkatsishvili when the acquisition was done. So my involvement was not at the high level. My involvement was at the back office so to speak. So when I'm explaining the context of this meeting, I'm saying I had no role in relation to that acquisition.

So it's clear to me that, if I'm supposed to be discussing these kind of issues with Mr Patarkatsishvili, I am certainly not the right person to go to Georgia to discuss these issues with

Mr Patarkatsishvili. That to me is very clear, what I'm saying here.

MR RABINOWITZ: In fact what you say, as is clear from paragraph 95, is that your involvement with Rusal had been limited to some aspects of the shareholders agreements.

A. Correct.

Q. Between Mr Abramovich. But is that right? The shareholders agreement was the one signed in 2001, you weren't just involved in that, Mr Tenenbaum?

A. When I say involvement, I mean when I have some form of input. So when I'm going to be discussing with people issues, I need to have a context of those discussions and the only context of the discussion that I could have had with respect to Rusal was the shareholders agreement because that was the only thing that I was in substance involved in.

Q. Mr Tenenbaum, you say that is the only thing you were in substance involved in, but you've already told us in your evidence that you were called into meetings in relation to the February 2000 meetings; we have seen that you oversaw -- you were involved in the negotiations in respect of the March 2000 agreement with Mr Deripaska; you were involved in indeed the drafting of the agreement, albeit you say in an oversight role in

relation to that. That's all right, isn't it?

A. But for me to have a substantive discussion with somebody at this level of Mr Patarkatsishvili, I have to be knowing -- I have to know what I'm talking about. I'm not just going to go talk about things that I have no direct involvement or knowledge, and when I say involvement, the drafting of these agreements were not by me and they were not substantive issues anyway. The only substantive issue that I was ever involved with respect to Rusal, I was responsible for my team but what I was involved with personally was the shareholder agreement. So if I were to go and discuss Rusal with Mr Patarkatsishvili, I would be the last person that Mr Abramovich would send. He would have sent Ms Panchenko, he would have sent Mr Gorodilov, Mr Davidovich, Mr Shvidler, but not me to discuss what is being reflected in these notes.

Q. Mr Tenenbaum, we have seen that you were in fact involved, you may say that your involvement wasn't central but you were in fact involved in every single stage of the aluminium acquisition and its passing into Rusal. You were involved in the February 2000 discussions, albeit you say in a limited respect, and you were involved in the March 2000 negotiations and you were involved in the signing of both the main agreements

and you were involved in the shareholders agreement.

You obviously had a great deal of knowledge about the aluminium interests which had been acquired. That's right, isn't it?

A. I had certain knowledge, I agree with you, yes.

Q. And to the extent that you didn't have the sufficient knowledge, are you saying that you couldn't have asked Mr Abramovich to tell you what you needed to know?

A. With respect to what, I'm sorry?

Q. Well, with respect to your ability to go and discuss this matter with Mr Patarkatsishvili?

A. But, as I say in my statement, I don't understand reading these notes what am I supposed to be discussing there? I really don't understand and we can go through them and I can show you what doesn't make sense at all.

Q. We will go through them.

A. Okay.

Q. But for the moment I'm trying to understand the first of the reasons that you give as to why you say this really just couldn't have been a discussion that you were a party to, and the suggestion you appear to try and make is to say that you really were not involved in Rusal and, therefore, you wouldn't have been the person who was sent for this?

A. When I'm saying involved, at that level to discuss

things with Mr Patarkatsishvili, that is correct. I'm not the person to discuss issues with Mr Patarkatsishvili, absolutely not.

MR RABINOWITZ: My Lady, this will go on for a while so this may be a convenient moment.

MRS JUSTICE GLOSTER: Yes. Was this the only time you met Mr Patarkatsishvili?

A. That I actually had a meeting with him?

MRS JUSTICE GLOSTER: Yes.

A. The only time.

MR RABINOWITZ: But you had met him previously, I think you already accepted that?

A. I met him in Logovaz when I was dealing with Mr Berezovsky, when we were about to fly to New York to meet with Mr Murdoch. I didn't know Mr Patarkatsishvili. He was a scary person, I'm sorry to say, but I would never deal with Mr Patarkatsishvili or have meetings with him.

Q. But you were one of Mr Abramovich's trusted advisers?

A. With respect to certain issues, yes, of course. Issues that I had competence in. He wouldn't -- he's a very successful person, he doesn't send a person that cannot discuss these issues with somebody at the level of Mr Patarkatsishvili, it's just not -- it's not plausible, to me, to me, sorry.

MRS JUSTICE GLOSTER: And who is Igor at this meeting?

A. A question to me?

MRS JUSTICE GLOSTER: Well, do you know?

A. No, I don't know.

MRS JUSTICE GLOSTER: Mr Rabinowitz, what's your case?

MR RABINOWITZ: My Lady, we're also uncertain as to who Igor is. We can hazard a guess.

MRS JUSTICE GLOSTER: Apart from Mr Curtis's documents and the reference to Eugene Tenenbaum, why is there -- I'm asking you, Mr Rabinowitz, why isn't there a possibility that this was a meeting with Mr Shvidler?

MR RABINOWITZ: Because -- well, your Ladyship says apart from the fact that it says Eugene Tenenbaum on the top of the first card --

MRS JUSTICE GLOSTER: Well, just that's on the top of the note, isn't it?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Or the bottom of the note, bottom of the bit of --

MR RABINOWITZ: And the fact that it appears that these were the four people who were in Georgia in August 2003.

That is what makes it likely that it was Mr Tenenbaum.

MRS JUSTICE GLOSTER: Right. Is there any dispute as to who Igor is?

MR RABINOWITZ: I'm not sure anyone is particularly clear

who he is.

MR SUMPTION: From our side, we haven't the faintest idea.

MRS JUSTICE GLOSTER: Right.

Okay. You're not to speak to anybody about your evidence or the case over lunch, okay?

THE WITNESS: Understood.

MRS JUSTICE GLOSTER: 2.05.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, can I just look next at the second of the points you made at the time of the strike-out application as to why you say he couldn't have had this conversation. Again if you just look at bundle J2/3, which I hope you still have in front of you.

A. Yes.

Q. At page 54, paragraph 20 J2/3.32/54, you say this:

"Second, there was simply --"

Sorry, are you there?

"Second, there was simply no way that I would discuss Mr Abramovich's private affairs with or in front of people I had not met before, such as the English/American person (even if it was Mr Curtis), not

at least because these affairs were not something I had been directly involved [with]."

I'm not going over the second part of that again where you say you haven't been directly involved with it. But just in terms of your point about discussing Mr Abramovich's private affairs, it's right, is it not, that you had, of course, met Mr Fomichev before?

A. I met him, yes, I knew who he was. I'd never had meetings with him in terms of meetings, I just met him.

Q. And Mr Patarkatsishvili I think the same?

A. I met him but never had meetings with him before.

Q. And if Mr Abramovich had instructed you to go out and discuss these matters with these people, that could have given you no problem at all with following his instructions and having this conversation with them?

A. It would give me a major problem because I wouldn't want to go by myself at least, because I wouldn't be the right person to go.

Q. Well, it all depends on what you were going to achieve, Mr Tenenbaum, if the object of the exercise was to go and meet with Mr Patarkatsishvili and Mr Fomichev, with Mr Abramovich saying to you, "Well, go and find out what it is that they want, you can have a discussion, don't commit to anything," there would have been no difficulty at all for you in going and discussing these, even

though they were Mr Abramovich's private affairs, as you put it?

A. I knew why I went there, I explained why I went there, there was a very specific reason why I went there.

Q. Yes, but I'm trying to address the reason you give as to why you say you couldn't have had this conversation which is, as you've said in your witness statement, that you would not have been willing to discuss Mr Abramovich's private affairs in front of these people.

A. Correct, and I can go through the issues in the notes, we can discuss why it doesn't make sense that I would be discussing these issues with these people.

Q. We will go through those issues shortly.

If Mr Abramovich had said to you, "Mr Tenenbaum, you're my head of corporate finance, you certainly understand a fair amount about Rusal from your involvement with that, Mr Patarkatsishvili wants to talk about selling his Rusal interests, please go and talk to him about it." The fact that, as you put it, these were Mr Abramovich's private affairs would not have been an obstacle to you being able to do so, would it?

A. I think it would be because we're talking about selling something that I have no knowledge of him selling. So I wouldn't be the right person to go because I have no

knowledge of that, and I wouldn't be the one to be discussing price et cetera.

I've never done this before, negotiating a -- so why would he send me? He sent me for a very specific purpose.

Q. Mr Tenenbaum, you were head of corporate finance at Sibneft, correct?

A. At Sibneft, correct.

Q. So you would have had a fair amount of experience of the buying and selling of assets and companies and the like?

A. Acquisitions, yes.

Q. And if you had been told to go and have a discussion with someone about buying and selling of their 25 per cent interest in a company, you could certainly have had that discussion and not have been concerned about doing so?

A. I would be very concerned about talking to Mr Patarkatsishvili about it. I wouldn't go to talk -- I didn't want to go actually, I told Mr Abramovich I didn't want to go.

Q. But you did go, in fact, Mr Tenenbaum. We know that because you accept you were in Georgia.

A. Yes. I did go, contrary to Mr Shvidler's advice, but yes, I did go.

Q. Then this point about you not wanting to go really goes

nowhere, does it?

A. I'm sorry?

Q. The point about you not wanting to go, or being nervous about going, goes nowhere. Because whatever the purpose of your trip was, you were in the end willing to go, and you did go?

A. I did go to discuss a very specific issue which I have a strong recollection about, which I had knowledge of and I could actually talk about it. These other issues I couldn't, and I can go through why it doesn't make any sense that I would be talking about these things.

Q. Let's look at the third of the reasons that you gave at the time of the strike-out, if we can. That's at paragraph 21 of your statement J2/3.32/54. You say:

"Thirdly, I do not understand what the context of the 'meeting' is supposed to have been."

A. Correct.

Q. "As I say, I have never been involved in discussions about the acquisition or disposal of Rusal before, nor have been since."

That's not quite correct, is it, Mr Tenenbaum, that you had never been involved in discussions about the acquisition or disposal of Rusal before?

A. No, it is correct. At this level I have never been involved. I was always in the back office. I mean,

I was supporting, I wasn't even actually doing the documents, I was supporting my staff.

So, no, I was not involved in a direct role at this level of Mr Patarkatsishvili.

Q. Well, did you not tell us earlier that you had participated, for example, in the negotiations both in Moscow and in London in March?

A. It wasn't negotiations, it was supporting Ms Panchenko because she didn't speak English very well, and she asked me to be there because she was really able to do -- which was the share transfer points. These were the main points, everything else wasn't key. Because if you look at the documents, there are no key points in there for me to be involved in. I couldn't add value. I'm not saying I'm better or worse, I'm just saying there were better people who could do those things, not me.

The shareholder agreement I accept I did because I could add value, because it was to understand the business, to understand the risks, to understand each side's weaknesses and strengths, and that was my ability to participate, and that's what I did, and I'm negotiating as (sic) Mr Mishakov. That was my role.

Q. And in fact you've rather changed your evidence about this third point.

Can I ask you, please, to look at paragraph 98 of your third witness statement at page 108 E3/11/108. Whereas previously you have been saying you had never been involved in discussions about the acquisition or disposal of Rusal before, nor have been since. If you look at paragraph 98, what you now say is that you had never been involved in discussions with Mr Patarkatsishvili about the acquisition or disposal of Rusal before, nor have you since. And that's rather different, isn't it?

A. No, it's not, it's exactly what I was saying, I never discussed it with Mr Patarkatsishvili. And the second witness statement simply assumes, because it only talks about the meeting in Georgia, so therefore it's clear that I'm talking about my meeting with Mr Patarkatsishvili. This is a much more general witness statement about everything so here I have to be specific, I suppose, and so I was specific --

Q. Well, is your --

A. -- there.

Q. Sorry, Mr Tenenbaum, I really don't want to interrupt you, and if I do, please tell me.

A. No, no, I'm sorry, go ahead.

Q. Is your evidence now that you want us to say that your evidence is that you had never been involved in

discussions about the acquisition or disposal of Rusal before, nor have since; or do you want us to record your evidence now as being that you'd never been involved in discussions with Mr Patarkatsishvili about the acquisition or disposal of Rusal before, nor have you since?

- A. There are two points that I would like to make. First, I have never been involved in direct discussions with Mr Patarkatsishvili. And the second point, what these notes discuss is share transfers, structuring, cashflows, bank accounts. I was never involved with things like that. That is not my expertise. I had people in my department that dealt with that, but the right person, if anybody was here, was Ms Panchenko and Ms Khudyk who deal with those things.

I have no knowledge -- it would be like a mute talking about things, that's not what I do, that's not what I did. If it was to talk about buying an aluminium company, yes, I would be discussing it, but certainly not with Mr Patarkatsishvili.

- Q. Why does the fact that you had never previously been involved in discussion with Mr Patarkatsishvili about acquisition or disposal of Rusal mean that you couldn't have been involved in a discussion with him now, at this point?

- A. Because (a) I would have remembered these notes, if I had discussed these things, and secondly, Mr Patarkatsishvili wouldn't be talking to me. I mean, it is inconceivable for him to talk to me. It just doesn't make any sense to me. And, again, I can go through the notes, we can go line by line, and I can show you why it doesn't make any economic sense to me.
- Q. We know that it was Mr Abramovich who was supposed to go and Mr Abramovich sent you instead?
- A. Correct.
- Q. If Mr Abramovich sent you instead when Mr Patarkatsishvili had asked for Mr Abramovich to come, then you would have been the only person on hand for Mr Patarkatsishvili to talk with about these things.
- A. There were many other people that could have gone. I went specifically with respect to football. Because in July 1st we buy Chelsea, I spend 24 hours a day, seven days a week on Chelsea. That's all I do. That's all I did for the last eight years. I didn't do anything else.
- So yes, I went to discuss football because Mr Patarkatsishvili was very excited about -- this I do remember -- he was very excited about Mr Abramovich, the positive reaction he had when he bought it. And, to him, because he couldn't travel anywhere, it was

important to discuss how we did it, because he didn't believe that Roman just bought it because he loved football. He thought he did it for improving his image, and he wanted to do the same thing in Brazil, and that's what we discussed, that's what stayed in my mind.

Q. All right, well, we'll come to that if we may in a moment.

Now, just in terms of what it was that the meeting, sorry, the notes record you as doing. This was in fact only a first discussion meeting, it wasn't a meeting to close the deal, even on the terms of the notes.

A. To close which deal, I'm sorry?

Q. To close a deal to acquire or buy the Rusal shares.

A. The problem is that, in August 25th, I knew that we already sold the shares to Mr Deripaska, so what am I discussing with him? I still don't understand from these notes, what would I be discussing then? Because in August 25th, Mr Abramovich has done a deal with Mr Deripaska.

Q. He's in fact done a deal with Mr Deripaska for only 25 per cent of the shares.

A. Okay.

Q. Isn't it right that the deal that Mr Abramovich does with Mr Deripaska is in September 2003?

A. No, but they started discussing it in the summer.

Q. But the fact that they were discussing it, and they were discussing 25 per cent, doesn't mean that you couldn't have gone to have a conversation with Mr Patarkatsishvili about the 25 per cent of the shares that Mr Patarkatsishvili and Mr Berezovsky owned?

A. Again, I couldn't have discussed it because that's not -- first of all, I wasn't involved in the sale of Rusal. First of all, it was 50 per cent that was sold. The deal was -- I knew that that was the deal because when we bought Chelsea, Roman was not involved any longer in those transactions in Russia. We were only looking at Yukos Sibneft, and I participated a little bit in that, but primarily my time was in Chelsea. So I knew that he sold everything, we were out, out of Rusal. I understood that at that time. So when I'm discussing these things with him, I don't really understand what I'm supposed to be discussing with him.

Q. You say that he'd sold 50 per cent, that's not what the documentation shows in relation to the Rusal transaction, but I'm not going to go through that with you now, Mr Tenenbaum.

Can I just ask you about the fourth reason that you give as to why you say this couldn't have been a genuine note made of a meeting which you attended, and that is the language barrier point. You make this point at

paragraph 22 of the witness statement that you made in the context of the strike-out J2/3.32/54. At paragraph 22, page 54, you said this:

"As I mentioned, I may have had had some exchanges in English with the English/American gentleman by way of polite discussion, but I do not believe that Mr Patarkatsishvili spoke English (I certainly never recollect him speaking English on any occasion where I had met him previously) ..."

Are you sure about that, Mr Tenenbaum, that you do not recall Mr Patarkatsishvili speaking any English?

A. I've never -- I mean, I met him two/three times in my life. He's never spoken English to me.

Q. You see, Mr Reuben has given evidence that in late 1999 Mr Patarkatsishvili's English was good enough for him to act as a translator for Mr Anisimov on the course of a plane journey.

For your Ladyship's note, that is Day 15, page 16 at line 19, on to page 17.

And it's not only Mr Reuben who has given evidence of Mr Patarkatsishvili's ability to speak English, Mr Tenenbaum, but all of the English solicitors who interviewed Mr Patarkatsishvili later on in time have testified to him having at least a reasonable grasp of English.

Now, can we be clear, is it your evidence that he could not speak English or that you had not previously spoken with him in English?

A. I've never previously spoken to him in English.

Q. So you're not suggesting that you couldn't at this stage have had a conversation with him in English?

A. It's theoretical because I never spoke to him in English.

Q. Well, that's not what the note records.

Now, even assuming that Mr Patarkatsishvili's English was not fluent in 2003, which I have to say we do not accept for a moment, the fact is that you are fluent in both English and Russian, are you not, Mr Tenenbaum?

A. Yes.

Q. And so is Mr Fomichev?

A. I don't know.

Q. Well, Mr Fomichev claims to be a native Russian speaker with fluent written and spoken English. If Mr Patarkatsishvili's English had been a little rusty, both of you could have translated for Mr Curtis on this occasion if the need arose, couldn't you?

A. In theory, yes.

Q. What you have said in your witness statement, and you've repeated it here, is that you say that the reason you

went to speak to Mr Patarkatsishvili in Georgia was because you wanted to discuss football with him and that all you can remember discussing was the recent Chelsea acquisition. That's what you say at paragraph 90 of your witness statement E3/11/106.

A. Correct. Well, I understand that he wanted to talk to Mr Abramovich about football, and so that's why I went, because I had just recently -- we just recently acquired Chelsea and the transfer window was in August so that's why I went.

Q. So let's just be clear about this, and there is another reference to football in case my learned friend wants to jump up about it because I'll come to it. You are suggesting, are you, that the reason Mr Abramovich got you to fly all the way to Georgia was to talk about football with Mr Patarkatsishvili?

A. Yes.

Q. Do you think that's very likely to be a reason why you would fly all that way?

A. Yes. You don't know Mr Abramovich. Absolutely.

At that moment in time, my Lady, that's all we did, was football, and for the next seven years. That's all Mr Abramovich talks about.

Q. And just looking at paragraph 90 of your third witness statement, Mr Tenenbaum, you say this in the fourth line

E3/11/106.

Are you there?

A. 90, yes.

Q. "Mr Patarkatsishvili raised the fact that he had some contacts in Brazilian football and enquired whether Mr Abramovich had any interest in making an investment along with him."

A. Correct.

Q. You go on to say that Mr Patarkatsishvili was hoping that this would enable him to travel to Brazil and gain "positive publicity"?

A. Correct, exactly.

Q. And you also say this, this is about six lines up from the end of paragraph 90, that you assured Mr Patarkatsishvili that you would speak to Mr Abramovich about this Brazilian football proposal.

A. Correct.

Q. Then just looking at paragraph 91 E3/11/106, you say you then flew on to Nice where Mr Abramovich was staying, and that you passed on the detail of this conversation, and indeed the question of investing in Brazilian football clubs, I take it, to Mr Abramovich, is that right?

A. Correct.

Q. And then you also note, this is paragraph 91, you say

that:

"The following year Mr Patarkatsishvili did [indeed] invest in the Brazilian club Corinthians along with [his Iranian] partner, [Mr] Kia Joorabchian."

A. Correct.

Q. I don't think you need to turn it up, but that reflects the evidence which you had given in your second witness statement, that was at paragraphs 12 and 13 of your previous statement J2/3.32/52.

Let me ask you this, Mr Tenenbaum, how clear is your recollection of this conversation with Mr Patarkatsishvili in August 2003 about his Brazilian football contacts?

A. The Brazilian football is clear. His excitement that he could also gain positive publicity if he invested somewhere else and could travel freely is clear. The flight in is clear, the helicopter flight is clear. The ambience of the environment is a bit clear, because it was very weird, the house was finished but not really.

It was a very weird setting for me personally. People that I don't really know, I'm there. And so for me that moment is quite clear, that I arrive, I talk to Mr Patarkatsishvili, which is not normal a situation for me, and so that aspect of the trip is very, very clear to me.

Q. You see, Mr Tenenbaum, we have scoured the commercial database of the disclosed documents in this case and we have found that the Brazilian football investment which Mr Patarkatsishvili made has in fact been the subject of a pretty thorough Brazilian criminal investigation, and it appears that this resulted in a Brazilian criminal prosecution being launched in July 2007. Are you aware of that, Mr Tenenbaum?

A. Yes, of course.

Q. There is a document which I would like to take you to. It's to be found at HG, tab 28 at page 214 H(G)28/214.

A. Yes.

Q. You see, what this appears to suggest, Mr Tenenbaum, and you can see it in particular if you go to page 5 of the documents, page 218 within the file H(G)28/218, and if you look at heading 2, is that the first steps that Mr Joorabchian, I'm sure I'm mispronouncing his name, took in Brazil only occurred in mid-2004.

A. Correct.

Q. And indeed that pre-contractual negotiations only started in August 2004. You can see that if you look over the page, look under heading 4 H(G)28/219.

A. Yes.

Q. One also sees under heading 4 that offshore companies were only set up in August 2004.

A. Mm-hm.

Q. And indeed that the investments only started
in December 2004.

A. Correct.

Q. I have to tell you that despite making a thorough --
what I hope was a thorough search of the commercial
disclosure database, and indeed the extensive materials
relating to this Brazilian football club investment, we
have been unable to find a single document suggesting
that Mr Patarkatsishvili or Mr Joorabchian had any
Brazilian football contacts prior to August 2004.

Now, if that is right, I suggest to you that that
would indicate that it is unlikely that in August 2003,
about a year prior to Mr Joorabchian apparently getting
involved there, Mr Patarkatsishvili was talking to you
about his contacts in Brazilian football?

A. He was talking about his contacts, of his desire to go
to Brazil. Before you make an investment you have to
actually analyse where you're going. The fact that he
makes an investment in 2004 does not imply that he
didn't actually think about the investment in 2003.

Q. You see, even if the evidence set out in the Brazilian
criminal complaint is wrong and Mr Patarkatsishvili did
already know some Brazilian football contacts as
at August 2003, given the chronology, and that no

contract was concluded or investment made for over a year, the Brazilian football project could have been no more than a twinkle in Mr Patarkatsishvili's eye in the summer of 2003, couldn't it, Mr Tenenbaum?

A. It was absolutely just a twinkle, that's what I'm trying to explain. He was excited about Roman doing it and he decided to do it himself because of his relationships, I suppose, in Brazil and in Brazilian football. So the fact that he doesn't make an investment in a year's time doesn't mean that Roman buying Chelsea gives him the impetus I think to look at Brazil. That actually is very logical in my mind.

Q. The fact that, as you accept, it was no more than a twinkle in his eye, I'm sure that's a mangling of metaphors, but the fact that it was no more than a twinkle in Mr Patarkatsishvili's eye at that stage, you say was sufficiently important for you to break your journey from Georgia to London by stopping at Nice and reporting immediately and directly to Mr Abramovich about it, do you?

A. Yes, because I explained to Mr Abramovich my meeting with Mr Patarkatsishvili.

Q. You wouldn't have to divert to Nice to tell Mr Abramovich that Mr Patarkatsishvili had this dream or future idea, no more than a twinkle in his eye, that he

wanted to get involved in Brazilian football?

- A. First of all, you don't know Mr Abramovich, and at that time football was the only thing he was thinking about. And the second thing that we discussed, as I know it, is the Tbilisi football club which Mr Patarkatsishvili did own since 2001. So the discussion about football makes absolute sense because he was interested in football, he had an investment in Tbilisi in football since 2001. And the investment that Mr Abramovich made in Chelsea made him realise that he could potentially be free because he couldn't travel at that time.

So that makes perfect sense to me why, and why Mr Abramovich wants to know about things like that.

- Q. Why couldn't you just have spoken to Mr Abramovich about the Brazilian football project or Tbilisi football project on the phone? Why did you have to divert to Nice and see Mr Abramovich in person about that?

- A. That's the way Mr Abramovich is. I mean, he likes to talk to me, he likes to see me, it wasn't a major event. I stopped over and I sent (sic) over to see him.

- Q. You see, I have to suggest to you that your evidence about this is not truthful, Mr Tenenbaum, and that at this meeting, which you accept took place in August 2003, the matters that we see Mr Curtis recording in his handwritten note were discussed with

yourself and Mr Patarkatsishvili?

A. My Lady, I will explain why that is not the case. If we can go through the notes --

MRS JUSTICE GLOSTER: Explain.

A. We have to go through the notes and we have to go in detail why it's logically impossible for me to be at that meeting.

MR RABINOWITZ: I'll take you through the notes in a minute, Mr Tenenbaum, but I'd better put my case --

A. Go ahead.

Q. -- lest I later be criticised for not doing so.

Mr Abramovich asked you to attend in his place because you were one of his senior management team who was already familiar with the Rusal Holding structures and could advise on how to structure an offshore sale of Mr Berezovsky's and Mr Patarkatsishvili's stake. And following the meeting with Mr Patarkatsishvili, Mr Curtis and Mr Fomichev in Georgia you reported back directly to Mr Abramovich in Nice because the matter was sufficiently important for you to need to report to him in person. And that's the truth of it, isn't it?

A. No, it's not.

Q. Okay, well, can we just then look at the notes.

MRS JUSTICE GLOSTER: Are we looking at them in the manuscript or --

MR RABINOWITZ: I think if your Ladyship looks at them in the typed version.

Just picking it up at 005 H(A)59/110.005, you see that Mr Curtis has recorded the following, that Badri explained that:

"Few years ago several people owned several plants -- willing to sell shares. At that point shareholders of Sibneft bought most of these plants.

"Shareholders of [Sibneft] -- [Boris, Badri and Roman].

"We sold Sibneft so far no problems with deal.

"Remained partners with [Roman] in [aluminium]. Now have another partner who holds remainder of shares.

"Agreed with [Roman and] partner in Russian Aluminium -- shareholders 50/50.

"We agree 25 [Boris and Badri], 25 [Roman].

"We are passive shareholder[s] so [Roman] operating partner and every year we get dividends from [aluminium] activities."

That's what was discussed there, was it not?

A. Not in front of me. It's impossible to have discussed that the shareholders of "S" were Boris, Badri and Roman.

Q. You say it's impossible to discuss --

A. In front of me, I would have remembered that. I was

a trustee of Mr Abramovich's trust, I knew that he was the only beneficial shareholder. It is absolutely impossible for me to be at that meeting, to listen to these people talk about these things, and for me (a) not to remember something about this.

Q. That of course assumes that what you are saying about who is the only beneficial shareholder of Sibneft is correct. But on the basis that that is not correct, and that Mr Berezovsky's case is correct, that is precisely the sort of conversation that might have taken place, is it not?

A. Well, definitely not with me.

Q. All right.

A. Because I was on the opposite side of that knowledge, complete opposite side of that knowledge, so why would they discuss that with me if they believe that, for one instance.

Q. Well, they may have believed it and understood that you would have known about the true position as well, Mr Tenenbaum.

A. And why would I explain that I know something else?

Q. You see, Mr Tenenbaum, in a sense you are trying to answer that question by assuming the answer to the very question my Lady has to decide.

A. I see, okay, I'm sorry.

Q. Now, just looking at "Side 2" H(A)59/110.005:

"Because of difficulties of being partner of B [and I think that would be Boris] Badre agreed to sell both parts to [Roman].

"Now have to discuss key issues relating to transaction and all related issues -- price/structure -- our partners must feel comfortable as well."

Then two issues are identified with price and structure:

"Price not complicated we have mutual understanding of what involved -- in any event we will find right price.

"At this meeting just stipulate basic understanding of price from both sides to find middle grounds."

And then it says:

"[Roman and Badri] are eager to find solutions for both partners. Structure we have ideas to discuss."

And then:

"[Badri] asked [Mr Tenenbaum] if he understood [and Mr Tenenbaum] confirmed."

Again, Mr Tenenbaum, I have to suggest to you that this is what you discussed with Mr Patarkatsishvili and indeed Mr Fomichev and Mr Curtis?

A. It is impossible that I discussed it, because if you look at the next point H(A)59/110.005:

"B-T discussed structure. B said we need to participate in upside ..."

I knew that the Rusal stake was sold already. What could I be discussing with them?

- Q. Well, again, Mr Tenenbaum, that assumes that Mr Abramovich's evidence about having sold the 50 per cent to Mr Deripaska is right when the document suggests that he had only sold 25 per cent. That's right, isn't it?
- A. The documents showed only 25 per cent, correct.
- Q. Yes. And if the documents are to be believed, there was no reason at all why you couldn't have been discussing the other 25 per cent?
- A. I wouldn't be discussing with them.
- Q. Now, if you look then at card 2, side 3 H(A)59/110.006. I have to pick it up from the previous page:

"B-T discussed structure. B said we need to participate in upside -- need to have option to buy back and sell if sold to third parties or company go to public market -- or holding cos sold."

Then Mr Curtis looks as if he's unclear as to who said this, you or Mr Patarkatsishvili:

"Do we need option or can we go another way."

Mr Patarkatsishvili:

"Just a method. If offer is high enough we drop option -- all about figure."

You are then recorded as saying:

"What is [the] period/what triggers (what is event) or is it just call."

Then this is recorded:

"Eugene was asking if liked structure for [Sibneft]. [Mr Patarkatsishvili says] yes, problem complicated and costly."

And Mr Patarkatsishvili then says:

"Proposed structure that we now become registered shareholders and then sell back to R."

And you then say:

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

Just pausing there, the line from
Mr Patarkatsishvili:

"Proposed structure that we now become registered shareholders and then sell back to R."

That is not dissimilar to what in fact happened in July 2004 where Mr Patarkatsishvili was identified as being the beneficial shareholder of the Rusal shares in order that he sell to Mr Deripaska, do you remember that?

A. Yes, I do.

Q. And what Mr Patarkatsishvili was saying here was that -- or reflected the fact that until this point Mr Patarkatsishvili and Mr Berezovsky had not been reflected as being the owners, and what he was suggesting needed to happen was that the shares should be put in their name first so that they could then sell them to Mr Abramovich.

That's right, isn't it? That's what he was suggesting?

A. I'm sorry, what's the question?

Q. That is what he was suggesting?

A. To whom?

Q. To you.

A. Oh, no.

Q. Okay.

Just looking at the line immediately below that, Mr Tenenbaum, you are recorded as saying:

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

Now, you knew as at August 2003, didn't you, Mr Tenenbaum, that the BVI shares were bearer company shares?

A. Well, the fact is I actually knew the opposite because I thought in May 2003 it was registered already as Rusal Holding. That was my knowledge in May 2003.

Q. Can you look, please, at paragraph 50 of your third witness statement, page 91 E3/11/90?

A. Yes.

Q. At paragraph 50 you say:

"I was ... not involved with the registration of ... Rusal ... although I recall that at some stage I provided general advice about what investors would expect if the company was later listed on an international stock exchange. This may be why I have some recollection of the names of four BVI registered companies ..."

You recall that those companies had bearer shares?

A. Correct.

Q. And you say something similar, if you go to paragraph 103 at page 110 E3/11/110. If you look at -- it's in the middle of paragraph 103, and you're talking here -- in fact you're talking here about the cards themselves, and you say:

"As regards Rusal, I was aware at the time that the shares in the BVI company, through which Mr Abramovich's interests in Rusal were held, were bearer shares."

A. Correct. The point -- yes, go ahead.

Q. So in fact what is said in this note, in the card, about the bearer shares, BVI company and bearer shares, was something that you knew about?

- A. I knew that originally they were in bearer form, but as of May 2003 I understood that the restructuring was taking place so I would have -- if it's me in this meeting, I would have communicated that information if I was talking, and I don't understand why is it a problem to actually -- why is there a problem in existing shares being bearer? On the contrary, I think it makes sense that it's actually easier.
- Q. I don't think that's right, actually. If you look -- sorry, I'm not sure, I don't want to be at cross-purposes with you, but if you look at card 2, side 3, do you see that immediately after you are recorded as saying:
- "Problem is existing shares are bearer company with bearer shares."
- Mr Curtis is recorded as saying:
- "Changing B shares now BVI -- so do have to be registered anyway -- can transfer shares in BVI."
- The reference to changing bearer shares now in BVI reflects the fact, does it not, and this may be a point that you were making as well, that in May 2003 an act was passed in the BVI which changed the law in the BVI relating to bearer share companies and required them in the future to be held by custodians and registered?
- A. What is the question, I'm sorry.

Q. Well, are you aware of that?

A. I'm not aware.

Q. Okay. Now, just your point about why was the problem that the existing shares were bearer companies with bearer shares, the point that Mr Patarkatsishvili was making was about becoming registered shareholders, and the point that you made in response to that was that the shares were bearer shares.

A. Okay, but I knew that they weren't actually registered already, so why would I say it's a problem if I know that the company is changing structure? I guess that's what's not clear to me.

Q. Isn't that precisely the point that Mr Curtis is making, that the structure is going to have to change because of the position in the BVI?

A. But he didn't know about the May 2003 registration. I knew that.

Q. He knew about the law which had just been passed in May 2003, and isn't that the reason why there was a change in the position of the BVI companies in May to reflect the change in the law?

A. No, the change -- the bearer shares remained in existence for a while in Rusal, is my understanding. Madison remained as a bearer company because we were still paying them, as I understand, until 2005 through

those structures.

So the bearer structure actually didn't change how the payments were made. The ownership was changed, how the assets owned, the actual operating assets, not the trading company from which they were being paid. So the operating assets were changing to bearer form -- into registered form, so that's the key point here.

Q. Can we just look a little further down on "Side 4"

H(A)59/110.006. You then say:

"Problem -- shareholders of [Rusal Aluminium] -- all of shareholders in holding co we are partners of third party -- BVIs held 50/50, not RA."

That was right as well in terms of the way in which the BVI holdings were structured?

A. Correct, it was 50/50.

Q. And you would obviously have been aware of that, Mr Tenenbaum?

A. Yes, and so was Mr Fomichev.

Q. Why would Mr Fomichev have been aware of that?

A. Because since 2001 that's how they were being paid, through bearer form, and they knew that the 50/50 of Rual was owned by Mr Deripaska.

Q. Why would they have needed to know that the 50/50 of Rual was owned by Mr Deripaska in order for them to be paid?

A. Because my understanding from the structure that was done with them, they would have seen the flow of dividends, as I understand.

MRS JUSTICE GLOSTER: When you say that's how they were being paid, who is "they"?

A. Well, Mr Berezovsky, the 1.3 billion I guess I'm talking about, I'm sorry. When the 1.3 billion was agreed and paid to them, to Mr Berezovsky and Mr Patarkatsishvili, it was structured through the dividends of Rual and Pex and it went to, I guess, Devonian.

So they would have known, Mr Fomichev and, I only can assume, Mr Curtis, I don't know, would have known how the structure of Rusal was structured. Bearer form, 50/50 with Deripaska.

MR RABINOWITZ: Mr Tenenbaum, what they would have known was that Devonian was receiving dividends from Pex. They didn't need to know anything at all below that.

A. My understanding --

Q. About Rual or Rusal or anything else.

A. My understanding, they did, from Ms Panchenko.

Q. That's certainly not what she has said.

Let's look further along this note. Mr Curtis is then recorded as saying:

"We need to create proof of ownership to show where/why proceeds of sale are derived."

Then Mr Curtis also says:

"If shareholding already at BVI level it is easier to transfer ownership once we have established ownership route to RA -- no need to show changed in Russia just in BVI ... as going to have to change because of law -- good reason to show real. No need to show sale -- just say this was the true position -- reflecting actual position."

What Mr Curtis is suggesting there --

MRS JUSTICE GLOSTER: Why is Curtis "S"?

MR RABINOWITZ: Stephen.

MRS JUSTICE GLOSTER: Right, sorry, thank you.

MR RABINOWITZ: What Mr Curtis is suggesting there is if you have a document which identifies that Mr Patarkatsishvili and Mr Berezovsky were the owners of 25 per cent of the Rusal shares, that would actually reflect the actual real position, and that is what he said to you at the time, did he not?

A. No.

Q. We then have the note Mr Curtis made saying this:

"We have already made certain disclosures in market we will have to consider what we have said -- not to public but to banks/insurance co [etc]."

Now, you have been --

A. Sorry, it doesn't say "banks, insurance companies".

Q. "Not to public but to banks --"

A. Where's banks, sorry?

Q. Over the page, I'm sorry.

MRS JUSTICE GLOSTER: Which card are we on?

MR RABINOWITZ: It goes from the bottom of card 2, side 4 on to card 3, side 5.

Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I have that.

MR RABINOWITZ: Now, this comment about representation or disclosures made to banks/insurance companies, can I ask you, Mr Tenenbaum, to be given bundle H(A)76 at page 57 H(A)76/57.

I've asked Ms Panchenko about this document. It's a letter that was produced by Mr Streshinsky following a conversation that he had with Ms Panchenko in the context of the second Rusal sale. But do you see the first sentence:

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find below an alternative structure."

And I suggest to you, Mr Tenenbaum, that this concern within Mr Abramovich's companies or team about representations previously made to banks and insurance companies is precisely the point which is reflected in Mr Curtis's note of his conversation with you, is it

not?

A. It's not with me, sir.

Q. There is then the following exchange H(A)59/110.007.

Mr Tenenbaum:

"Do you have cos to be shareholders either by sale or by reflecting annual."

Mr Curtis says:

"Yes and they are all BVI."

There is then a discussion about whether they have banks which can be used. There is then this exchange, we're still on card 3, side 5. You say:

"Are you happy to show B/Bors."

Which presumably is Mr Patarkatsishvili and Mr Berezovsky.

And Mr Curtis says:

"Yes or just Badre if this is easier for you."

Again, Mr Tenenbaum, you will recall that in the context of the 2004 Rusal sale, the second tranche, what happened in the end was that only Mr Patarkatsishvili was shown as the owner of the Rusal shares and, again, I suggest to you that this again reflects a consistent concern by all of the parties involved as to whether documentation should show Mr Berezovsky as well as Mr Patarkatsishvili. Would you agree with that?

A. I'm sorry?

Q. Would you agree that there was a consistent concern reflected in the end in the -- let me ask that separately.

Would you agree there was a consistent concern about whether documentation should show Mr Berezovsky as well as Mr Patarkatsishvili as an owner of the Rusal shares?

A. The concern is that they weren't shareholders so I don't know how to answer that question.

Q. Well, we know that in the July 2004 sale documentation, the contract that was produced and the deed which was produced and signed by Mr Abramovich did say that Mr Patarkatsishvili had been a beneficial owner of the Rusal shares since March 2000. You're aware of that?

A. I'm aware, but it's not a correct interpretation. What Mr Abramovich signed was a deed acknowledging that Mr Patarkatsishvili is a shareholder, and what we agreed to was that he was a shareholder at the moment of the transfer of shares, to assist Mr Patarkatsishvili. We did not agree and we never -- Mr Abramovich never signed an acknowledgement that said Mr Patarkatsishvili was a shareholder from March 2000.

Q. I've shown you this note, Mr Tenenbaum. Is there anything else in this note that you would like to comment on that I haven't allowed you the opportunity to comment on?

A. I think the key points have been raised.

MR RABINOWITZ: Thank you very much, Mr Tenenbaum. I don't have any more questions.

MR MALEK: No questions, my Lady.

MR ADKIN: No questions.

Re-examination by MR SUMPTION

MR SUMPTION: Mr Tenenbaum, what was the reason why you went to Georgia?

A. I went because Roman asked me to go and to meet with Mr Patarkatsishvili about football.

Q. And precisely what were you supposed to discuss about football with Mr Patarkatsishvili so far as you were aware before the meeting started?

A. He wanted to find out about Chelsea Football Club, what we did, how we did it, as I understood from Roman at that time.

Q. What, Mr Patarkatsishvili wanted to do that?

A. As I understood it, yes.

Q. So did you -- you understood that you were going to be giving information to Mr Patarkatsishvili, did you?

A. Yes, because I was the one that actually purchased Chelsea, I was the one that actually did the transaction, so Mr Abramovich asked me to go and discuss that.

Q. Who did you expect to be present at that meeting before

you got there?

A. I understood I was only going to see
Mr Patarkatsishvili.

Q. Mr Rabinowitz said to you: if Mr Abramovich had told you
to go and discuss aluminium or Rusal, you would have
done so. Did Mr Abramovich say anything of that kind?

A. He did not, and if he would have said I would never have
gone.

Q. Now, the question of language, what is your first
language? You are fluent in both English and Russian.
Which is your first language?

A. I feel more comfortable in English but my first language
of course is Russian, but I left when I was 10 --
11 years old, so I think in English.

Q. What was Mr Patarkatsishvili's Russian like?

A. I thought it was okay, it was very good.

Q. What language do you usually speak when you are speaking
to other fluent Russian speakers?

A. I only speak Russian. They would take offence if I
spoke anything else.

MRS JUSTICE GLOSTER: Is Georgian a different language from
Russian?

A. Very different.

MRS JUSTICE GLOSTER: Forgive me --

A. He had an accent, of course, he had a very particular

accent, it was very interesting.

MRS JUSTICE GLOSTER: But Georgian is not similar to Russian --

A. No, no, it's completely different. But he spoke Russian from what I understand. I'm sure he -- I remember him having an accent in Russian, not a Moscow accent.

MR SUMPTION: He spoke Russian like a Yorkshireman.

A. I guess, yes. Actually true. When I married my wife and I went to Yorkshire I didn't understand anything people were saying to me.

Q. Now, do you remember whether anyone was making a note at this meeting?

A. There was no note being taken, I'm certain of that.

Q. What enables you to be certain that no note was being taken at the meeting?

A. Because Mr Fomichev told Mr Shvidler and others that the note was taken after I left, whether at the same time or maybe much later, but he told them that it was taken later, and it was -- I think it was dictated by Mr Patarkatsishvili. He told him some other things as well, that the Devonia agreement was actually a sham and that there was no on-sale.

Q. Mr Tenenbaum, how do you know that the note was dictated in the way that you've described?

A. Mr Fomichev told Mr Shvidler.

Q. Now, if you had seen Mr Curtis at the time making a note, what would you have done differently, if anything?

A. I think if he was taking a note and it was a real business meeting, I would have asked to see the note after to check the note, what was said -- to confirm what I was saying.

If I was saying these things, my experience of anybody taking a note, I would want to review that note, and I would remember if somebody is actually taking a note outside as we're having lunch.

Q. Now, in August 2003, what did you understand to be the form of the BVI shares? Did you understand them at that stage to be bearer shares or registered shares?

A. My understanding of my involvement in May 2003, that it was all changed, it was all restructured, that was my understanding.

Q. So if somebody had asked you in August 2003: what is the current status of these shares, are they presently, as we speak, bearer shares or registered shares? What would your answer have been?

A. My answer would have been that they were registered shares, the assets owning shares, not the trading, because that was what's being restructured as well.

Q. Could you please scroll back, or you may need some

assistance for this, scroll back in the transcript to [draft] page 125 of the transcript, please.

MRS JUSTICE GLOSTER: When you say the BVI shares, could you just clarify for the transcript, BVI shares in which company?

A. The way it was structured, it was really a tolling(?) structure as I understand. I think it was the four companies that --

MRS JUSTICE GLOSTER: Can I just be clear on the dates here?

A. Sure.

MRS JUSTICE GLOSTER: We're looking at August 2003?

A. Before August 2003.

MRS JUSTICE GLOSTER: Before August 2003.

MR SUMPTION: The restructuring he said was in May.

MRS JUSTICE GLOSTER: Yes.

A. Sorry, before May 2003, yes.

I'm sorry, what's the question?

MR SUMPTION: Now, just pursuing that, just to make sure we've got it clear on the transcript, when you said that you would have answered that they were registered shares, which companies were you referring to when you said you would have answered that they were registered shares?

A. Well, I would have answered that the asset owning companies that owned the actual assets, the operating

assets, because it was structured as trading, and then the assets -- the companies that owned the assets, originally they were bearer and then it was restructured into registered form.

Q. Right. So when you gave your answer about being registered shares, you were talking about the asset-owning companies?

A. Correct.

MRS JUSTICE GLOSTER: Can I have the names of those, please?

A. From me? I don't remember.

MRS JUSTICE GLOSTER: You don't remember.

A. No.

MR SUMPTION: Have you got [draft] page 125 of the transcript on the screen? If we could just scroll down a little bit further to line 23, do you see the answer that you gave at lines 23 to 25? Which companies are you talking about there?

A. The asset-owning companies.

Q. Well hang on. When you say:

"Okay, but I knew that they weren't actually registered already, so why would I say it's a problem if I know that the company is changing structure?"

What you say there is:

"... I knew that they weren't actually registered already --"

A. Sorry, I mean to say that if I understood them to be registered at that moment in time, in August 2003, I wouldn't be saying that they were in bearer form.

I guess that's what I'm saying.

MRS JUSTICE GLOSTER: Okay, just let me be absolutely clear in this.

A. Okay.

MRS JUSTICE GLOSTER: As at August 2003, the reconstruction had taken place as of May?

A. I don't know. My knowledge was the restructuring was happening from May 2003, whether at that moment in time the restructuring happened I had no knowledge. So it may have been happening or it may have not happened yet. But my knowledge was from May 2003 that the structure had changed or changing. So in August 2005, my only knowledge was that they were registered already. Whether in fact in August 2003 they were, I don't know, I don't have knowledge of that.

MR SUMPTION: But your belief --

A. But my belief was, yes, correct.

Q. -- whatever the facts may have been, is what you're talking about, is that right?

A. My belief was that.

MRS JUSTICE GLOSTER: You've mentioned August 2005, is that a mistake?

A. Sorry, August 2003.

MRS JUSTICE GLOSTER: August 2003.

MR SUMPTION: Now, you were asked about the knowledge of Mr Fomichev of the bearer shares, and you gave some evidence about the knowledge that they would have derived from the way in which money was paid to them, the 1.3 billion.

A. Correct.

Q. Could you please be given bundle H(A)62, at page 26 H(A)62/26. This is a letter addressed to Curtis & Co by Mr De Cort, which was written on 8 August 2003, about a fortnight before the Georgia meeting.

Would you just like to read through it and tell us whether it assists you in saying what knowledge they had about the status of the shares?

A. Well, they would have had knowledge of the trading company, Rual Trading.

Q. Of the trading company?

A. Correct. And they would have also seen the 50 per cent interest in it.

Q. Where do we see the 50 per cent?

A. We see it in the third paragraph.

Q. And what conclusion does one derive from that?

A. That our side -- that Mr Abramovich held 50 per cent in the Rual trade.

Q. Does that assist one, one way or the other, on the question of whether they were bearer shares or registered shares, or of what knowledge Mr Curtis might have had on that subject?

A. I don't see "bearer" or "registered" here.

MR SUMPTION: Understood.

Okay, thank you very much, Mr Tenenbaum, I have no further questions.

MR RABINOWITZ: My Lady, I have a question arising out of that evidence.

MRS JUSTICE GLOSTER: Yes, fine.

Further cross-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Tenenbaum, for the very first time in re-examination you have suggested that there has been a conversation between Mr Fomichev and Mr Shvidler in which Mr Shvidler was told by Mr Fomichev that this was a fabricated note.

A. Correct.

Q. You have made five witness statements, correct?

A. Correct.

Q. And Mr Shvidler has made six witness statements, correct?

A. Correct.

Q. And it's right, isn't it, that at no stage in any of those witness statements has there ever been this

suggestion made before?

A. Correct.

Q. Thank you very much --

A. No, can I say something?

MRS JUSTICE GLOSTER: You may.

A. We explained this to the lawyers and we were thinking about calling Mr Fomichev, but Mr Fomichev showed Mr Shvidler a text from Mr Berezovsky in which Mr Fomichev thought -- well, thought -- it was stated to him that because he was helping us, Mr Berezovsky threatened him, and it was clearly something that he was concerned about and clearly he was scared for his safety.

And so, therefore, together with the lawyers, we decided that we couldn't call him, because he was scared. He showed the note, it referred to Mr Berezovsky as "Dr Evil", and so -- we wanted to call Mr Fomichev but he didn't want to come. And I don't understand why it didn't come out before but clearly this is an important piece of information.

MR RABINOWITZ: Who saw the text message, Mr Tenenbaum?

A. I did, with Mr Shvidler. Mr Shvidler showed it to me.

Q. I suggest to you that this is completely untrue?

A. Well, you should ask Mr Fomichev --

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm going to take the

break now for ten minutes. Very well.

You're not to talk to anyone about your evidence.

(3.09 pm)

(A short break)

(3.30 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, I just want to ask you a few questions about your last answer, if I may. You said that Mr Fomichev showed Mr Shvidler a text from Mr Berezovsky. Can you tell me when you say that occurred?

A. A few months ago.

Q. Can you try to be more specific, please?

A. I'll have to come back to you on that, I don't remember. I'll have to ask Mr Shvidler as well what he recalls, I don't remember. A few months ago. It was communicated to the lawyers. They may have a record of that.

Q. You say it was a text, so it follows that there would have been, what, a telephone call -- sorry, a text on a mobile phone?

A. Correct.

Q. Are you suggesting it was sent by Mr Berezovsky?

A. That's what Mr Fomichev told us.

Q. Well, you say that Mr Shvidler saw it --

A. I saw it as well.

Q. Right. So who do you say it was from?

A. Mr Fomichev showed us, and he said it's from Mr Berezovsky.

Q. You also say that:

"... it was stated to him that because he was helping us, Mr Berezovsky threatened him ..."

Can you be very clear as to what you say this text said, please?

A. Okay, I'll try. I don't remember verbatim. The thought was he knew he was helping us.

MRS JUSTICE GLOSTER: Can you be clear when you say --

A. Sorry, Mr -- well, he didn't -- it said that, "I know you're helping them. I'm watching you. I'm listening to your phone calls. I'm controlling your Skype." And I think he referred to Dr Evil, "I'm Dr Evil," something to that effect.

Q. So you say Mr Berezovsky signed himself off as "Dr Evil" in this?

A. Correct.

Q. You also say he showed the note, you say:

"He showed the note ..."

Is that because he'd printed something off?

A. No, he forwarded it to Mr Shvidler's phone?

Q. So Mr Shvidler has a copy of this on his phone, does he?

A. I have no idea.

- Q. But you're saying he must have had a copy of it on his phone at some point?
- A. Correct.
- Q. Do you know if Mr Shvidler still has a copy of this?
- A. I've no idea.
- Q. I take it you have never had a copy of this?
- A. I have not, no.
- Q. Can you explain why you've never referred to this previously in your witness statements?
- A. I spoke to my lawyers and what was I going to say? That he was threatened?
- Q. And Mr Shvidler also says nothing about this in any of his witness statements, does he?
- A. Correct, because he was scared, so how could we say it? We couldn't refer to him.
- Q. According to you, one of the things that Mr Fomichev said was that Badri had dictated the note after the meeting. Why couldn't you have said that in your witness statement, if that was the position?
- A. The lawyers were aware of it.
- Q. Well, that's not an answer to my question, Mr Tenenbaum. It's your evidence --
- A. I actually wanted to say it.
- Q. Are you saying that Mr Shvidler gave a copy of the text to Skaddens, the lawyers?

A. I'm not sure. I don't believe so.

Q. Mr Tenenbaum, I have to suggest to you that you are making all of this up and it's completely untrue.

A. The fact that he confirmed that the Devonia was a sham was done with the lawyers. The fact that the notes were fabricated after the meeting was done in front of the lawyers. The threat was communicated --

MRS JUSTICE GLOSTER: Sorry, just stopping there.

A. Yes.

MRS JUSTICE GLOSTER: When you say "was done with the lawyers," are you saying that Fomichev told --

A. Our lawyers.

MRS JUSTICE GLOSTER: -- your lawyers that?

A. Yes.

MRS JUSTICE GLOSTER: And when you say "the notes were fabricated after the meeting was done in front of the lawyers" --

A. Sorry, it was explained to the lawyers how the notes were fabricated, after I left Batumi.

MRS JUSTICE GLOSTER: When you say "it was explained", you mean Mr Fomichev explained?

A. Yes, sorry, Mr Fomichev explained.

MR RABINOWITZ: Just to be clear, Mr Tenenbaum, you're suggesting, are you, that no one referred to this because of a concern about Mr Fomichev?

A. Correct.

Q. And that's why he hasn't been called as a witness?

A. Correct.

Q. Again, I suggest to you that is completely untrue.

A. It is true.

MR RABINOWITZ: Thank you very much.

MRS JUSTICE GLOSTER: Right. Mr Sumption, any further
re-examination after that?

MR SUMPTION: There's no further re-examination, but your
Ladyship should know that these were one --

MRS JUSTICE GLOSTER: Well, just a second, if there's no
further re-examination --

MR SUMPTION: There is no further re-examination, no.

MRS JUSTICE GLOSTER: Is anything you're about to say likely
to lead to a request by Mr Rabinowitz that he further
cross-examines this witness?

MR SUMPTION: I doubt it, but I would not wish to deprive
Mr Rabinowitz of the option if he thinks differently.

MRS JUSTICE GLOSTER: Right. Well stay where you are,
please, Mr Tenenbaum.

MR SUMPTION: The three statements attributed to
Mr Fomichev, which your Ladyship has just heard, are
three of a number of hearsay statements by Mr Fomichev
which we did not allow to be included in witness
statements because we were not prepared to call

Mr Fomichev for a number of reasons which I don't propose to go into.

It was quite a complicated matter. The matter came out in re-examination not intentionally. I asked Mr Tenenbaum, as your Ladyship will recall, to say whether he was able to say whether a note was being taken in his presence. That was not designed to elicit his knowledge of how the note was in fact taken although the result was that Mr Tenenbaum did give evidence to that effect, so I followed up his answer in order to clarify what the source of his information was, so far as it wasn't clear, which it pretty well was, in answer to my earlier question. So it came out very largely accidentally and it is there on the record. This happens from time to time.

But the reason why, and I think that I'm in a position to say this myself, why none of the witness statements deal with any hearsay statements from Mr Fomichev was our concern that we should not be leading such information if we were not in fact prepared to call him.

MRS JUSTICE GLOSTER: Yes, I see.

Mr Rabinowitz, you may wish to consider your position in the light of what Mr Sumption has said and in the light of the evidence but that's a matter for

you.

MR RABINOWITZ: Thank you, my Lady.

MRS JUSTICE GLOSTER: I'm not saying that in any threatening way, I'm simply saying that if you wish to make any application --

MR RABINOWITZ: Well if something arises out of that, and I suspect one of the things Mr Sumption is concerned about, and it's a thought, if it is, that's crossed my mind as well, is whether there has been a waiver of privilege here, and that is something we will have to look at carefully.

I entirely understand what Mr Sumption has said about it, and we will look at the transcript and come to a conclusion about that.

MRS JUSTICE GLOSTER: What I'm saying is I don't expect you to make any application now, if indeed you're going to make any application.

MR RABINOWITZ: Indeed, I'm grateful for that.

MRS JUSTICE GLOSTER: Think about it.

MR SUMPTION: My Lady, the position on the evidence is that the next witness is Mr De Cort but my learned friend has indicated to us that, given the speed at which witnesses have succeeded each other, he would prefer Mr De Cort's evidence to be deferred I think until Monday. We are quite happy with that if your Ladyship is. Obviously it

isn't at all easy to deal with one witness after another, particularly when they're all relatively --

MRS JUSTICE GLOSTER: Absolutely, so what are we doing tomorrow then? Mr Deripaska?

MR SUMPTION: Mr Deripaska is giving evidence at 2.00.

MRS JUSTICE GLOSTER: Is that by video-link?

MR SUMPTION: Yes, it is, it's by video-link from New York and therefore 2.00 is very much a fixture.

I should tell your Ladyship that in relation to both Mr Deripaska and Mr Hauser, who is expected to give evidence early next week, we have been asked to make it clear to all those concerned, but obviously particularly to your Ladyship, that Mr Deripaska's privilege in relation to material in the bundles or evidence that he may give, so far as it exists, is not waived. They are anxious that your Ladyship should know that. And Mr Deripaska will be represented by his own counsel while he gives evidence. He is also expected to be here when Mr Hauser gives evidence.

We understand that it may be intended to put in a written statement of what points they may wish to take on privilege, and, if that happens --

MRS JUSTICE GLOSTER: I would quite like to have that now if that were possible.

MR SUMPTION: Well, we don't have it. They say that they

may do that. Now, if they do that it may be sensible -- obviously your Ladyship must have it as soon as anyone does -- it may be sensible, given that we only have tomorrow afternoon for Mr Deripaska's evidence, for your Ladyship to be prepared to sit in the morning in order to deal with any issues of principle that arise on privilege.

MRS JUSTICE GLOSTER: Yes, well, there's not much point me being given the note at 2 o'clock in the afternoon.

MR SUMPTION: Yes, that's very much what we want to avoid.

We have made it clear that we would like to have the note as soon as possible and we will let your Ladyship have it at the very earliest moment that we can.

MRS JUSTICE GLOSTER: Can I make it clear, and obviously I don't know who counsel or solicitors are, that I require it by tomorrow morning so that I can consider it.

MR SUMPTION: My Lady, yes.

I should say that the issues of privilege, although they potentially arise in relation to both Mr Deripaska and Mr Hauser, are primarily, so far as they're problems at all, they're much more likely to be problems in relation to Mr Hauser, the reason being that Mr Deripaska can give evidence of facts within his own knowledge but it may be said that Mr Hauser, as his

lawyer, cannot be required to give evidence of knowledge that Mr Deripaska conveyed to him as part of his instructions in his capacity as a lawyer.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: So the two of them are in a somewhat different position, and for that reason we anticipate, though we haven't seen the memorandum yet, that any difficulties that do arise are much more likely to arise in relation to Mr Hauser. Having said that --

MRS JUSTICE GLOSTER: What, next week?

MR SUMPTION: Yes. Having said that, we will try and defuse the position as far as we can by simply seeking to avoid areas which cause them concern, if we can consistently with our own client's interest.

MRS JUSTICE GLOSTER: Right, okay. So does that mean we don't have a witness for tomorrow morning?

MR SUMPTION: It means we haven't got any business for tomorrow morning unless this business surfaces and needs to be dealt with by your Ladyship tomorrow morning.

MRS JUSTICE GLOSTER: Okay.

MR SUMPTION: There are scheduling issues which we will need to raise with your Ladyship at some stage, but at the moment it's not possible to do so because instructions are still in the process of being taken.

MRS JUSTICE GLOSTER: Right, okay, but we're up to speed on

the timetable?

MR RABINOWITZ: We're very much up to speed, and my learned friend has lost or withdrawn a few witnesses as well so we're certainly not falling behind the timetable.

I think there is an issue -- or perhaps I shouldn't get into it -- with Mr Malek's witnesses and when they can come. I think the parties between us are content with an arrangement. Mr Streshinsky I think can only come next -- not this following Monday but the Monday after, and that's one of the scheduling issues which is going to arise, but rather than take up your Ladyship's --

MRS JUSTICE GLOSTER: Well, if you can't sort it out I'll have to make a ruling, but hopefully you can sort it out.

MR SUMPTION: We will try to sort this out between ourselves as far as we can without troubling your Ladyship. If we need to do so we will do it tomorrow.

MRS JUSTICE GLOSTER: Very well. I'm fairly relaxed about interposing witnesses amongst the expert witnesses.

MR SUMPTION: That may be necessary.

MR RABINOWITZ: Can I just -- sorry, I hope my learned friend was finished.

In terms of Mr Deripaska, we are doing our best to accommodate him and he will be giving evidence from

2 o'clock tomorrow. I cannot say that I am completely confident that in a two and a quarter hour slot I will finish all my questions with Mr Deripaska. To some extent that depends upon the points of privilege which I haven't been told about yet, because it may be that I'm not allowed to ask him a number of the questions I was proposing to ask him, I don't think that is the case, but there is that risk, my Lady, because it is impossible, as your Ladyship knows, to know exactly how long any witness is going to be.

MRS JUSTICE GLOSTER: Is he being cross-examined through translators?

MR RABINOWITZ: I hope and pray not. His witness statement is in English --

MR SUMPTION: I regret to say that he is.

MR RABINOWITZ: He has sworn a witness statement in English.

MR SUMPTION: Mr Deripaska speaks perfectly good English but obviously Russian is his principle language. Rather like the position of Mr Nevzlin, one understands that a witness may be able to speak perfectly good conversational or business English but not be willing to try his luck under pressure of cross-examination, and that seems an entirely legitimate position to take.

MRS JUSTICE GLOSTER: I can understand that.

MR RABINOWITZ: Then all the more so, my Lady, I cannot,

standing here, tell your Ladyship that we'll definitely finish.

MRS JUSTICE GLOSTER: I can sit until about 5.00 but it would be a bit of a problem if I have to sit very much after 5.00.

MR RABINOWITZ: We will do our best.

I don't know to what extent Mr Deripaska is willing to be flexible about when we start. I don't know whether your Ladyship would be willing to start at 1.30, for example?

MRS JUSTICE GLOSTER: I'll start whenever you want me to start.

MR SUMPTION: Can we investigate that and keep your Ladyship informed?

MRS JUSTICE GLOSTER: Yes, certainly. I'll start at 1 o'clock or whenever.

MR RABINOWITZ: If he's in New York I don't want to impose a time which is unreasonable for him, although no doubt Mr Deripaska will do his best to assist the court. We are happy to start whenever Mr Deripaska is ready.

MR SUMPTION: We will find out how early he can reasonably be asked to start.

We're told that the bridge, which presumably has to be booked, will start at 1.30, so that may be the earliest practical time. But we'll try --

MRS JUSTICE GLOSTER: Anyway, I'll leave you to sort that.

MR SUMPTION: We will see what we can organise, my Lady.

MRS JUSTICE GLOSTER: If you could tell my clerk whenever,
either later this evening, send him an email, or
tomorrow morning, as to when you want to start I will be
there.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed.

Mr Tenenbaum, thank you for coming along to give
your evidence.

(The witness withdrew)

(3.45 pm)

(The hearing adjourned until Friday, 18 November 2011)

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