Tuesday, 20 December 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Closing submissions by MR SUMPTION (continued)

MR SUMPTION: The starting point for the Rusal claim is the question whether Mr Berezovsky ever had an interest in Rusal, or in any assets associated with Rusal, because manifestly, unless he had, no other question on this part of the case arises.

In our submission, this allegation effectively collapsed in the course of Mr Berezovsky's oral evidence. He is the only witness to the various oral exchanges on which the Rusal claim depends, and I submit that he was unable to make any of his contentions good. Indeed one of the weaknesses of my learned friends' written closing on this area is that it makes very little attempt to address the problems for his case raised by his own evidence.

The first thing that Mr Berezovsky has to establish is that he had an interest in the pre-merger aluminium assets, the so-called KrAZ and Bratsk assets. These assets were subsequently contributed to the merger with Mr Deripaska's businesses. So it follows that, unless Mr Berezovsky had an interest in the KrAZ and Bratsk assets, it's difficult to see how he could have had an

interest in the merged business.

There are, as we understand it, three bases on which it is suggested that Mr Berezovsky might have had an interest in the Bratsk and KrAZ assets. One is that he was entitled to such an interest by virtue of the term alleged to have been agreed in 1995 about future business, namely that the three alleged parties to the 1995 agreement would share in all future business ventures of any of them in the same proportions as they shared, it was said, in Sibneft.

Now, that is an allegation that has been modified in Mr Berezovsky's fourth witness statement. The agreement in 1995 is now said to have been that each of them would have a right of first refusal in relation to the others' future business ventures.

The second basis on which a claim is made to the Bratsk and KrAZ assets is that there was an express agreement in 1999, towards the end of that year, to apply the 1995 agreement to those assets. Thirdly, it is said that the KrAZ and Bratsk assets were paid for from Mr Berezovsky's and Mr Patarkatsishvili's share of Sibneft profits. So all three of those bases of course assume that Mr Berezovsky succeeds in establishing what he says was agreed in 1995.

Now, the first basis, founded on the future business

agreement in 1995, is a non-starter. Even on the footing that there was an agreement about future business in 1995, both Dr Rachkov and Mr Rozenberg are agreed that it lacks the degree of definition required to be effective in Russian law. In fact, I suppose it is possible, in theory, that the parties might have acted on an agreement they supposed to have been effective even though it actually wasn't.

But the parties cannot even have believed that the future business agreement in 1995 had been made. The evidence about that agreement we have summarised at paragraphs 39 to 41 of our document. In short, this agreement would have meant that Mr Berezovsky was agreeing in 1995 that Mr Abramovich, whom at the time he hardly knew and whose track record in business he despised, was going to have 50 per cent of any future venture of Mr Berezovsky's, even if that venture was entirely conceived and managed by someone else, say Mr Patarkatsishvili.

Now, that seems a preposterous suggestion in the circumstances of 1995, and it appears to have been alleged solely for the purpose of giving Mr Berezovsky some legal basis on which to claim an interest in the Bratsk and KrAZ assets, some five years later.

The second argument is that there was a specific

agreement in late 1999 to apply the 1995 agreement to the aluminium assets, and that is an allegation that was added to the pleadings by amendments at the outset of this trial. We owe the argument, as we understand it, to the ingenuity of Dr Rachkov who believed it to be implicit in paragraphs 250 to 263 of Mr Berezovsky's fourth witness statement, which he sets out verbatim in his report.

There is in fact nothing in those paragraphs that supports that allegation. What Mr Berezovsky says in those paragraphs is that Mr Bosov came to him with a proposal that Mr Berezovsky's group should buy the KrAZ and Bratsk assets, and he and Mr Patarkatsishvili then passed that proposal on to Mr Abramovich. The witness statement of Mr Berezovsky says that he considered himself bound to pass the Bosov proposal to Mr Abramovich as a result of the future business agreement of 1995, but it doesn't suggest that anything was actually said about the 1995 agreement to Mr Abramovich, or that any agreement was in fact made by reference to what was supposed to have been agreed in 1995.

Ultimately, Mr Berezovsky failed to support the Rachkov analysis in his oral evidence. What he said in his oral evidence, as your Ladyship may recall, was that

Mr Bosov proposed to him that he should acquire assets in the aluminium sector, which Mr Bosov did not actually identify at the time but which later turned out to be the KrAZ and Bratsk assets. Mr Berezovsky says that he then suggested to Mr Abramovich that he should follow this up. Mr Abramovich, according to this version, said he would think about it and later did follow it up, but that's all.

Now, Mr Abramovich denied, in his own evidence, that he had ever agreed anything with Mr Berezovsky in advance of the acquisition of the KrAZ and Bratsk assets, and his evidence on the point was not in fact challenged in the course of his cross-examination by my learned friend, Mr Rabinowitz. It is, we suggest, clear that Mr Abramovich's involvement in the acquisition of these assets originated with a proposal which came not from Mr Berezovsky but from Mr Patarkatsishvili, and that Mr Berezovsky himself had no involvement at all.

That leaves the third basis put forward for Mr Berezovsky's supposed interest in the pre-merger aluminium assets, namely that it was paid for from his and Mr Patarkatsishvili's share of Sibneft profits.

The short answer to this is that it wasn't. The cost of paying the initial instalments of the price of the KrAZ and Bratsk assets was borrowed from MDM Bank,

and the later instalments were then satisfied from the equalisation payments made by Mr Deripaska.

Your Ladyship may find it useful to add in the margin of paragraph 412 of our closing document --

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: -- a reference to Panchenko's second witness statement at paragraph 51, and Mr Shvidler's sixth witness statement at paragraphs 10 to 11, where the financing arrangements for the initial payments of the Bratsk and KrAZ asset purchase agreements is described. We understand that to be accepted by Mr Berezovsky, see his closing document at paragraph 1152.

Now, as it happens, this is the one year, 2000, for which we have a detailed breakdown of payments made to Mr Berezovsky and Mr Patarkatsishvili. The bolshoi balance does not include any contribution to the cost of acquiring the KrAZ and Bratsk assets. Now, what Mr Berezovsky says, and the reference is to paragraph 260 of his fourth and principal witness statement, what he says is that he agreed with Mr Abramovich, it seems some time early in 2000, that the cost of acquiring the KrAZ and Bratsk assets would come out of this share in Sibneft profits. So the argument seems to be, based on this, that although Mr Berezovsky didn't actually pay out of his profits

anything, he relies on an agreement that he would pay in that way.

With respect, his evidence about this agreement cannot be true. That became apparent in his cross-examination when it was obvious that he had only the haziest idea of what the cost of acquiring the KrAZ and the Bratsk assets was, and no idea at all of what share of Sibneft profits he would come into.

If Mr Berezovsky and Mr Patarkatsishvili had a 50 per cent interest in the KrAZ and Bratsk assets upon their acquisition, their share of the total purchase price would have been $287.5 million. Of that sum, $87.5 million would have been due from them almost immediately. That was nearly half the profits, the total amount was nearly half the profits which Sibneft ultimately earned over the entire year 2000, and nearly six times the total distribution of the company to shareholders in that year. That would have come, on this view of the matter, on top of the $490 million recorded in the bolshoi balance as having been paid to these two gentlemen over the year without reference to any contribution to the KrAZ and Bratsk assets.

So what Mr Berezovsky's case really amounts to is a suggestion that he and Mr Patarkatsishvili got 50 per cent of these assets, not even for a deferred

payment, but as it turns out for nothing at all.

Now, it's perfectly fair to point out that in the event, Mr Abramovich recouped the whole of what he paid for the KrAZ and Bratsk assets from the equalisation payment received from Mr Deripaska as a result of the merger. That happened in two stages, because the equalisation payment was originally agreed at $400 million at a time when the Bratsk assets weren't included in the deal. The Bratsk assets were subsequently included in the deal in April and May 2000, and the agreement was restated on 15 May to incorporate them. At that point, the price, the equalisation payment was increased to 575 million which exactly matched what Mr Abramovich had paid for them.

So that is how matters turned out and it clearly was a golden deal from Mr Abramovich's point of view.

But, of course, that was not something that could have been foreseen at the time when the KrAZ and Bratsk assets were acquired. And the question that we are currently concerned with is whether it was agreed at that time that Mr Berezovsky and Mr Patarkatsishvili were going to have their share of these expensive assets paid out of the supposed Sibneft profits.

My learned friends in their closing have pointed, as they have done repeatedly in the course of the trial, to

the provisions of the master contract dated 10 February which described Mr Patarkatsishvili as one of the persons constituting party 1. That, in our submission, is not actually going to help much. The master agreement was a homemade statement of intent. The inclusion of Mr Patarkatsishvili as part of party 1 may well give rise to an argument that Mr Patarkatsishvili was one of the buyers along, I suppose, with Mr Shvidler who was also named as one of party 1. But neither of them contributed a single cent to the acquisition of those assets. Mr Shvidler was certainly not a partner in the venture, he was simply its chief negotiator.

The evidence is that Mr Patarkatsishvili was added to party 1 on the same basis as Mr Shvidler. They were both critical figures in the process of negotiating the deal. And that evidence is the only evidence, the only view of the matter that is consistent with Mr Shvidler's participation unless your Ladyship accepts that he too was a buyer and the evidence does not support that at all.

Now, in fact, Mr Patarkatsishvili's role in the acquisition of the KrAZ and Bratsk assets was clearly that of an intermediary and facilitator. That is the role attributed to him in the four protocols which were prepared for him in February. The evidence about these

protocols is summarised in our document at paragraph 406, sub 3. These documents were backdated and they spoke prospectively about a transaction which had in fact just happened at the time when they were drafted. That has always been accepted to be the case.

But Mr Patarkatsishvili must have regarded them as correctly recording his (inaudible) and entitlement because otherwise it is impossible to understand how or why he would have had them notarised before a Moscow notary for the record on 16 March 2000.

Now, there was an attempt made in cross-examination, which is taken up in my learned friends' closing document, that these four protocols were designed to cover the cost of the aircraft which it had been agreed at the Dorchester Hotel was going to be acquired for Mr Patarkatsishvili. Mr Abramovich was asked about this and ridiculed the idea, suggesting that you could buy four planes with the $115 million of commission due to Mr Patarkatsishvili according to the protocols.

The only evidence which my learned friends cite in support of this evidence, your Ladyship will find it in their closing, I don't think you need to turn it up, at paragraph 62, sub 8, paragraph 1225, sub 5, and note 653. This is concerned with the circumstances in which the commission agreements were located and where they

were found.

What is said is that the commission agreements were found in Mr Kay's office in a box which had previously been stamped "Kathrein & Co". Kathrein & Co was the name of the Austrian bank where Mr Patarkatsishvili opened an account to pay for the aircraft. The stamped name of Kathrein & Co on the box had been struck out, so it looks as if Mr Kay, in whose office this was found, was simply using an old box to store old documents. I'm not sure that one can infer anything from that.

In our written closing, what we have sought to do is to lay to rest the suggestion about these protocols being related to the purchase of an aircraft by an exhaustive analysis of the documentation relating to Mr Patarkatsishvili's aircraft. The reference in our closing is paragraph 406, sub 3, and in particular the long analytical note at note 1461, which will give your Ladyship the references to all the relevant documents.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: It's a matter of speculation, of course, why Mr Patarkatsishvili did have the protocols notarised, but I would suggest that by far the most likely reason is that this was related to the agreement which Mr Abramovich in his evidence said that he made with Mr Patarkatsishvili about the deferral of his commission

payments. Mr Abramovich's evidence was that the commission would be reassessed as the aluminium venture developed and that payment would be deferred in the meantime. So the 115 million was not paid.

Now, the likelihood must be that Mr Patarkatsishvili wanted an unimpeachable record of what had been agreed so far so as to ensure that when he came back to Mr Abramovich later, under no circumstances would he get less than $115 million. Mr Patarkatsishvili obviously hoped that the venture would turn out well and that the results would justify much more than $115 million, and in that hope he turned out to be entirely justified.

MRS JUSTICE GLOSTER: And nothing surprising about taking the credit risk in the deferral, you say?

MR SUMPTION: Not at all because --

MRS JUSTICE GLOSTER: Because?

MR SUMPTION: Because the credit risk -- Mr Abramovich, his assets were very considerable. The 115 million, by the standards of the amounts of money thrown about in this case for far less significant assistance than that which Mr Patarkatsishvili gave, was a relatively small sum.

By this time in 2000, Mr Abramovich was sitting on, on either party's view of the case, very, very considerable wealth. Now, of course, all of these points are about Mr Patarkatsishvili's entitlement,

whereas the question that we are concerned with is Mr Berezovsky's entitlement. Even if Mr Patarkatsishvili was a buyer, properly so-called under the terms of the master contract, which we deny, that doesn't mean that Mr Berezovsky was. Indeed it makes the omission of his name even more significant.

If Mr Patarkatsishvili was a buyer, it is, I suppose, theoretically possible that his private arrangements with Mr Berezovsky were such as to entitle Mr Berezovsky to a share of whatever Mr Patarkatsishvili had. But Mr Berezovsky does not have permission in this action to base his claim on his alleged partnership with Mr Patarkatsishvili alone, but if Mr Patarkatsishvili was a buyer, and Mr Berezovsky had an interest, it could only be by virtue of those arrangements between themselves.

Now, Mr Berezovsky's claim to have been, as he put it, the key person who made this deal happen was, in our submission, cruelly exposed in his oral evidence for the self-important nonsense that it was. Mr Berezovsky declared that he had attended many meetings with Lev Chernoi, Mr Reuben and Mr Anisimov to discuss key aspects of the transaction. All completely untrue. Mr Berezovsky couldn't remember a single thing that had been discussed at these meetings at which he was

supposedly the key person. He accepted that he never even saw the master contract or the ten asset sale agreements which marked their conclusion, which he surely would have done if he had been party to them, or if he had been the key person, or involved in any way in their negotiation.

Mr Berezovsky had only the vaguest idea of the terms of those agreements, and the occurrence of these alleged meetings with Mr Berezovsky was in fact denied by every other witness supposed to have participated in them. Mr Abramovich, Mr Shvidler, Mr Anisimov and Mr Buzuk all denied it. Mr Reuben, who was of course called by my learned friends, remembered only a meeting with Mr Patarkatsishvili at which Mr Abramovich had been identified as the person whose consent was required for the deal. Mr Reuben said nothing about meeting Mr Berezovsky, and indeed his evidence was that Mr Berezovsky's name hadn't been mentioned.

We've collected the references to this at paragraph 409, sub 1 --

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: -- and note 1474.

Now, the evidence of all these witnesses in fact more or less accorded with statements on the subject in Mr Berezovsky's own earlier statements. Because, as

your Ladyship will recall, in his witness statement Mr Berezovsky said that it was Mr Patarkatsishvili, not him, who conducted the negotiations. In his pleadings in the Metalloinvest action, Mr Berezovsky said he had attended no meetings at all. In an interview with Vedomosti, which we have quoted at paragraph 409, sub 3 of our closing, Mr Berezovsky said that he was out of the country at the time and was simply telephoned after the event by Mr Patarkatsishvili and told, as he put it, that a certain deal had taken place. "Will it make money?" says Mr Berezovsky. "Yes", says Mr Patarkatsishvili. "Then I'm content", says Mr Berezovsky. That's the statement that he made to a newspaper later in March.

Presented with these inconsistencies Mr Berezovsky suggested that, well, he'd been using "meetings" in a rather special sense, as meaning just occasions with a formal agenda and written minutes. I doubt whether Mr Berezovsky has ever attended a meeting with a formal agenda and written minutes, certainly none have been disclosed in either category in these proceedings.

In our submission, Mr Berezovsky's performance on this issue was frankly embarrassing. In fact, he did nothing at all to further the deal. In Mr Berezovsky's written closing, the most that is said is that he had

established valuable contacts in the industry, and that suggestion appears to depend upon a single visit to Krasnoyarsk at the end of 1998 or early 1999, which was well before the acquisition of the KrAZ and Bratsk assets was first proposed.

At this meeting, Mr Berezovsky said that he had some involvement in mediating a dispute between the KrAZ plant's owners and the provincial governor, General Lebed. Apart from that, all the prior contacts in the aluminium industry were not Mr Berezovsky's but Mr Patarkatsishvili's, and Mr Berezovsky's supposed connection with General Lebed appears to have been completely irrelevant to the deal that was subsequently made. The evidence is that General Lebed had absolutely nothing to do with it. We've summarised the references to General Lebed at 4094 of our document.

Now, what's said by Mr Berezovsky's counsel is that he would have been, or Lebed could have been a nuisance if he had not been on side, but there's actually no evidence before your Ladyship about whether General Lebed was on side or off side, and if he was on side, there is no evidence that it was Mr Berezovsky who had anything to do with putting him there.

This, in our submission, remarkably thin case is not reinforced by the suggestion made in my learned friends'

closing that the sellers all thought that they were selling to Mr Berezovsky. This is simply wrong. First of all, Mr Bosov is prayed in aid. Mr Bosov's witness statement was served in order to deal with a disclosure issue, with which your Ladyship has not in the event been troubled, about a video recording which Mr Abramovich was at one point said to have obtained of some discussions at Mr Patarkatsishvili's offices in Moscow and shown to Mr Bosov earlier this year. That's what that witness statement is mainly about.

Mr Bosov's statement is relied upon because in an introductory paragraph of his witness statement, it's paragraph 8, he says that he told Mr Abramovich that he was planning to sue Mr Berezovsky for a debt and, according to the statement, he said that he'd made an agreement with Mr Patarkatsishvili, not in fact Mr Berezovsky, under which commission was due to him because of his role in the sale of the Bratsk and KrAZ assets. Now, Mr Bosov seems to have been planning to sue Mr Berezovsky about that on the footing that he thought Mr Berezovsky would be liable for his agreements with Mr Patarkatsishvili, presumably on the basis that he understood them to be partners.

Now, these facts, even if they were proved, would not establish that Mr Berezovsky was a buyer of the

Bratsk and KrAZ assets. In fact, they are recorded in Mr Bosov's witness statement as simply allegations. We know absolutely nothing about the basis of Mr Bosov's proposed claim, nothing at all about the underlying facts. That evidence does not therefore appear to take your Ladyship any further.

Mr Reuben is relied upon on the basis that he is said to have given evidence that Mr Patarkatsishvili told him that Mr Berezovsky was involved. Well, Mr Reuben gave evidence that must have been a certain disappointment to those who had subpoenaed him without a witness statement. It turned out he had very little to do with the negotiations. What he in fact said about them was that he assumed that the buyers were Sibneft shareholders, and he assumed that Mr Berezovsky was a Sibneft shareholder because, he said, that was common knowledge. Mr Reuben's evidence, however, was that Mr Patarkatsishvili never mentioned Mr Berezovsky's name and that he himself never came across Mr Berezovsky in connection with the transaction at the time.

Mr Michael Chernoi was wheeled out as saying that his brother Lev thought that he was selling to Mr Berezovsky. Since Mr Chernoi's statement is double hearsay, and since Mr Chernoi refused to give evidence, even though arrangements had been made for him to do so

by video-link, giving no plausible reason at all for his refusal -- I think he said that because Mr Deripaska would probably not be giving evidence he didn't see why he should -- Mr Chernoi's untested witness statement is entitled, in our submission, to absolutely no weight at all.

Mr Patarkatsishvili's interview notes undoubtedly do, as I acknowledge, suggest that by 2005, at any rate, Mr Patarkatsishvili believed himself and Mr Berezovsky to have had an interest in the KrAZ and Bratsk assets corresponding to their shares in Sibneft. However, the only indication of how such an interest might have been acquired is that the money to acquire these assets has been acquired with Sibneft assets. That was not in fact correct, as my learned friends I think now recognise.

Now, there is a suggestion, it appears in my learned friends' written closing at paragraph 1155, sub 4, that Mr Berezovsky authorised Mr Patarkatsishvili to participate in the negotiations for the acquisition of those assets in advance, and that that is something that Mr Patarkatsishvili said in these interviews. In fact that is something that comes from a passage which, although attributed by my learned friends to Mr Patarkatsishvili, is attributed by Ms Duncan to Mr Berezovsky. Your Ladyship will find that, I don't

ask you to turn it up now, in due course at bundle R(D)2/30/127.

MRS JUSTICE GLOSTER: What is the paragraph number where the claimants, you say, wrongly attribute --

MR SUMPTION: Sorry, what he said was that he authorised Mr Patarkatsishvili to take part -- sorry, Mr Abramovich to take part.

MRS JUSTICE GLOSTER: Hang on, let me just get this clear.

MR SUMPTION: It's 1155, sub 4, where the allegation is that Mr Patarkatsishvili and Mr Berezovsky told the solicitors in proofing sessions various things. To take one example, Ms Duncan records, and then there is a quotation:

> **"[Abramovich] then came & said is [a] problem...**
>
> **"We said ok -- he came [and] said [Mr Deripaska wanted] 50%..."**

So the suggestion is that all of these discussions were authorised in advance by Mr Berezovsky.

Now, that is an extract from the notes, which in fact relates to something that Ms Duncan has attributed to Mr Berezovsky rather than to Mr Patarkatsishvili.

MRS JUSTICE GLOSTER: So what you say is wrong, and I'm looking at subparagraph 4 of paragraph 1155, what you say is wrong is the statement, "in the course of proofing session with Mr Patarkatsishvili", in the sense

that that's meant to come -- although it was a proofing session with Mr Patarkatsishvili, in fact --

MR SUMPTION: In fact it appears, both from the context and in this case from Ms Duncan's attribution, to have been Mr Berezovsky saying that.

MR RABINOWITZ: That's precisely what we say, my Lady.

MR SUMPTION: I also say that, whoever it came from, that statement is wrong, it's inconsistent with all the other evidence for reasons that I've already advanced.

MRS JUSTICE GLOSTER: I'm not following you, Mr Sumption. At subparagraph 4 in the claimant's closing, which is what I'm looking at --

MR SUMPTION: What is suggested here is that both Mr Patarkatsishvili and Mr Berezovsky told the solicitors that they had discussed the proposed merger with Mr Abramovich in advance and that they had, so to speak, authorised him to proceed with it.

MRS JUSTICE GLOSTER: Yes, and the first sentence is that the statement is consistent -- the claimant says -- with what both Badri and Berezovsky told solicitors in the course of proofing sessions dating back to 2005.

MR SUMPTION: This particular record appears to have been something that Mr Berezovsky, and not Mr Patarkatsishvili, said.

MRS JUSTICE GLOSTER: The 2007 quote?

MR SUMPTION: That's right, but it's referring back to what was said earlier, before the 2000 merger agreements.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: And all I'm saying at this stage is that that is not something that Mr Patarkatsishvili can have attributed to him. Obviously somebody said that at the proofing session, I don't dispute the accuracy of the notes at all, but it does not appear to have been Mr Patarkatsishvili, it appears to have been Mr Berezovsky, and to have been a forerunner of what Mr Berezovsky says in his witness statement in this action which is something that, for reasons that I've already given, simply cannot be true.

MRS JUSTICE GLOSTER: And Mr Berezovsky was at the proofing session in November 2007?

MR SUMPTION: Yes, he was. He was indeed, at both days. The only proofing sessions with Mr Patarkatsishvili at which Mr Berezovsky was not present were the ones that happened in 2005. Dr Nosova was present at those but Mr Berezovsky was not.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Now, if Mr Berezovsky didn't have an interest in the KrAZ and Bratsk assets, then it is hardly realistic for him to be suggesting that he had a share in the merged business into which those assets were

later incorporated. That he had no such interest is, ironically, something that is confirmed by the evidence that your Ladyship has heard about the Dorchester Hotel meeting on 13 March and the events leading up to it.

Now, it is I think undisputed that the principals of the merger with Mr Deripaska's business were agreed in the course of negotiations occurring at the very start of March 2000 at a hotel in Moscow, and then, on the following day, at Mr Abramovich's house at Sareevo outside the city.

MRS JUSTICE GLOSTER: That's the Baltschug Kempinski?

MR SUMPTION: That's the Baltschug Kempinski Hotel.

There is a minor difference between Mr Deripaska's recollection and that of the other witnesses as to how much of it was agreed at Sareevo and how much of it was agreed at the Baltschug Kempinski Hotel, but I'm not sure anything turns on that.

The participants in these negotiations were Mr Abramovich, Mr Deripaska, Mr Shvidler and Mr Bulygin, and the outcome was recorded in the preliminary agreement which was another homemade agreement drawn up in something of a hurry by Mr Bulygin.

Now, that agreement provided for Mr Abramovich's companies to contribute all the aluminium assets that they had just acquired, other than the Bratsk assets,

and the omission of the Bratsk assets is significant, for reasons that I will come to, to the merged business, in return for an equalisation payment of $400 million.

The agreement provided for a definitive agreement to be drawn up and executed between the principles by 20 March which would contain all the terms agreed in the preliminary agreement but, obviously, in more elaborate and legally verified terms.

It's also quite important to note that the preliminary agreement provided by clause 8 that the integration of the businesses was to start at once, with effect from 1 March. The evidence is that it did.

Now, the detailed terms, the ones that were subsequently included in the sale and purchase agreement of 15 March, were then negotiated by a working group which comprised representatives of Mr Deripaska's side and Mr Abramovich's, and the fullest account of their work was in fact given by Mr Hauser in the course of his cross-examination and examination-in-chief.

The working group met several times in London and in Moscow. The final meeting was in Moscow on the evening of 14 March and extended into the early hours of the 15th. At that final meeting, the members of the group resolved all the outstanding points referring each one to Mr Deripaska and Mr Abramovich, who were elsewhere,

for a final decision.

MRS JUSTICE GLOSTER: I think it was Mr Shvidler.

MR SUMPTION: Mr Shvidler, forgive me, yes, and Mr Deripaska for decision.

The result of the labours of the working group was the purchase and sale agreement between Runicom Limited and Mr Deripaska's company, GSA (Cyprus), and that confirmed in binding form and in more elaborate legal language all the terms agreed in the preliminary agreement, including the equalisation payment.

MRS JUSTICE GLOSTER: And you set that out in your statement?

MR SUMPTION: Yes. Now, the agreement was then, as we pointed out, amended and restated on 15 May to reflect the subsequent addition of the Bratsk assets. The Dorchester Hotel meeting was the only occasion even vaguely connected with the merger at which Mr Berezovsky participated. He has therefore sought to suggest that it was the meeting at which everything was agreed under his own masterly direction. What he said about this was:

"Everybody understood I am key person, not anybody more."

Now, the reality is a sad contrast to that claim. Your Ladyship will recall the evidence about how and why

the meeting was set up, which has been given primarily by Mr Abramovich but also by Mr Deripaska and Mr Shvidler. It was a meeting summoned by Mr Berezovsky because he had just learnt about the merger from Mr Patarkatsishvili who had himself just learnt about it from Mr Abramovich. Mr Berezovsky had not been involved and therefore wanted to know more about it.

The Russian presidential election, this is an important matter of background, had of course occurred on 7 March, a few days earlier, and Mr Berezovsky, who believed himself to be an ally and patron of Putin, and had contributed substantially to his election campaign, was apparently at the zenith of his political influence and certainly nobody had in mind the disasters that ensued later in the year.

It has never in fact been entirely clear what Mr Berezovsky expected to get out of this meeting but he was certainly a man with a rich sense of his own importance, and a taste for grandstanding may well be a sufficient explanation of why he wanted to have it. But there is absolutely no mystery about Mr Abramovich's reason for going. His evidence was that Mr Berezovsky was his political protector and that when Mr Berezovsky wanted to see him, he went, and if he possibly could he went without delay. Mr Deripaska came, partly in order

to be able to discuss the operational integration of a merged business with Mr Abramovich and Mr Shvidler, which was already in progress as a result of the terms of clause 8 of the preliminary agreement, and partly in order to dun Mr Berezovsky for a debt.

The meeting was, on any view of the matter, a bizarre occasion. Mr Deripaska personally strongly disliked Mr Patarkatsishvili because, as Mr Abramovich told your Ladyship, Mr Patarkatsishvili had at one point assisted one of Mr Deripaska's rivals in the aluminium wars. Mr Deripaska had not been warned that Mr Patarkatsishvili was going to be there and was not at all pleased to find that he was. His main interest in meeting Mr Berezovsky was to be able to dun him for the debt.

The meeting occurred in the living room of Mr Patarkatsishvili's suite in the Dorchester Hotel and all the witnesses present, including Mr Berezovsky, agree that for the first hour or so Mr Berezovsky himself was not present. All of those present, apart from Mr Berezovsky, agree that he eventually appeared from another room in the suite, unusually attired.

Now, thereafter, the meeting appears to have been awkward and brief. What seems, I would suggest, absolutely clear is that it simply cannot have been

a meeting at which negotiations occurred about the terms of the merger. There are a number of reasons for saying that, reasons which, in our submission, are conclusive. In the first place, all the key points of the merger had already been agreed in the preliminary agreement and did not require or receive renegotiation. Indeed the integration of the merged business was already in progress. As far as the parties to the preliminary agreement were concerned, therefore, the merger was a done deal.

Now, neither Mr Berezovsky nor Mr Patarkatsishvili had had any involvement in the negotiations of the merger to date, and neither of them can have known anything about the merger except that it had happened. Mr Berezovsky did not dispute this in cross-examination. He did suggest that he had had some discussions with Mr Abramovich before the Dorchester Hotel meeting on the subject, but Mr Abramovich denied this, and it's a point on which he was not challenged in cross-examination.

Now, neither Mr Berezovsky nor Mr Patarkatsishvili had been involved or were ever involved in the work of the working group that was in the process of preparing the final terms of the agreement. Indeed Mr Berezovsky's evidence shows that he was not even aware of the existence of the working group. He

acknowledges that at the time of the Dorchester Hotel meeting he had not even seen the preliminary agreement, his evidence was that he knew nothing about its terms, and it is really impossible to understand how Mr Berezovsky could have participated meaningfully in a negotiation for the merger if he did not know what was in the preliminary agreement that the parties he was talking to had undertaken to embody in the final agreement just ten days before.

There is no evidence at all before your Ladyship that Mr Patarkatsishvili knew any more about the previous course of negotiations than Mr Berezovsky did. On the contrary, the evidence is that he was told after the event, very shortly before the Dorchester meeting occurred.

The second point to make is that when Mr Berezovsky was asked about what were the key terms --

MRS JUSTICE GLOSTER: Can you just remind me, what roughly is the date of the preliminary agreement?

MR SUMPTION: The agreement itself is undated, and the witnesses --

MRS JUSTICE GLOSTER: Yes, but it's early March --

MR SUMPTION: The witnesses said the beginning of March 2000. They were not more precise than that.

The best clue one has to it is in fact clause 8.

Mr Shvidler believes that the meetings started at 11.00pm on 4 March, and a reference to that is given at page 340, note 1504 of our document.

It must have been very shortly after 1 March because that's the date at which they were agreed that the integration of the businesses should become effective.

MRS JUSTICE GLOSTER: So we're looking at about 5 March?

MR SUMPTION: About 4 or 5 March, yes.

MRS JUSTICE GLOSTER: If the meeting started at around 11.00pm on the 4th --

MR SUMPTION: That is right, depending on whether your Ladyship prefers Mr Deripaska's evidence that the whole of it was agreed at the hotel, or that it carried over to Sareevo.

MRS JUSTICE GLOSTER: So it's the 4th or 5th.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: On your case anyway.

MR SUMPTION: Yes. I don't believe that the date of the preliminary agreement has been a matter in issue.

MRS JUSTICE GLOSTER: It's certainly not in issue that it was concluded and signed prior to the Dorchester Hotel meeting.

MR SUMPTION: It is not, no.

The second point to be made is that when Mr Berezovsky was asked, "Well, you say that the key

terms were negotiated and resolved at the Dorchester meeting, what were the key terms?", after some hesitation he said that they were these: the proportions as between the Deripaska side and the Abramovich side; the management role of Mr Abramovich in the merged business; the choice of English law to govern the final agreement; the price, ie the equalisation payment; and a term that none of the parties, including Mr Deripaska, would be entitled to sell out of the merged entity without the consent of all the others.

Now, in fact, with the exception of that last term about not selling out, which I'll deal with separately, every one of these matters had been resolved in the preliminary agreement. That was an agreement about which Mr Berezovsky had no knowledge but which all the other parties present had already bound themselves to put into effect and which they had been personally involved in negotiating.

There is a most peculiar passage, if your Ladyship has Mr Berezovsky's principal witness statement to hand, at paragraph 280, which illustrates --

MRS JUSTICE GLOSTER: Can you give me the reference?

MR SUMPTION: It's paragraph 280 at D2/17/256.

MRS JUSTICE GLOSTER: Can you give me the page?

MR SUMPTION: I've got the page, I suspect, wrong.

MRS JUSTICE GLOSTER: Or the paragraph number.

MR SUMPTION: It's paragraph 280, which is at D2/17, page 256.

Now, what is said here is that at this meeting:

"Badri explained to us all that the merger agreements were to be governed by English law."

Now, in our submission, this is perfectly absurd. Here was Mr Patarkatsishvili, according to Mr Berezovsky, who had had no part in the negotiations to date, solemnly explaining to Mr Abramovich, Mr Shvidler and Mr Deripaska what they had themselves agreed in a document which they had been personally involved in negotiating. It is a simply ridiculous suggestion.

Now, all of these points were put to Mr Berezovsky in cross-examination and he didn't have an answer. He simply flailed and fumbled about. The one thing, oddly enough, which Mr Berezovsky claims to remember about how the negotiations of these supposed key elements actually went turned out to be something which could not be right, and that concerned the equalisation payment.

Your Ladyship will recall that Mr Berezovsky in his witness statement claimed to recall that the equalisation payment had been agreed, this is at paragraph 278 of his witness statement. What he said

was that it had been agreed at 575 million. He said he wasn't very happy with that aspect of the agreement but reluctantly agreed to it.

Now, actually, nothing like that happened because the correct figure was 400 million, not 575. 400 million had been stated in both the preliminary agreement ten days or a week before the Dorchester Hotel meeting, and subsequently in the share sale and purchase agreement executed two days after the meeting.

575 million, the figure referred to at paragraph 278, was the increased equalisation payment which was agreed in the restated agreement of 15 May. What had happened was that the equalisation payment had been increased on 15 May as a result of the addition to the merger of the Bratsk assets. Mr Berezovsky had obviously picked up the 575 million figure either from the restated agreement during the preparation of his witness statement or, more probably, from somebody else who had studied the restated agreement, since one doesn't get the impression that Mr Berezovsky was in the habit of reading long legal documents, and Mr Berezovsky wrongly attributed that 575 million figure to the original agreement.

In my learned friends' written closing, paragraph 1181, they say that the Bratsk assets were in fact, they

suggest, agreed to be included at the Dorchester Hotel meeting, which was why Mr Berezovsky remembered the figure of 575 million. And they suggest that it must have been omitted from the 15 March sale and purchase agreement for lack of time.

Now, your Ladyship need not spend much time on this suggestion. Mr Berezovsky did not, in the course of his evidence, suggest that the Bratsk assets had been added to the merger at the Dorchester Hotel meeting, and this was a point that was not suggested to a single witness of ours. On the contrary, Mr Berezovsky admitted that he was unaware of the increase of the equalisation payment attributable to the addition of the Bratsk assets, and that evidence he gave at Day 9, page 82. Your Ladyship may find it helpful to add in the margin at paragraph 415, sub 6 of our closing, a reference to that evidence at Day 9, page 82.

Now, in addition to Mr Berezovsky's own evidence, Mr Abramovich and Mr Hauser --

MRS JUSTICE GLOSTER: I think it's 419, not 415.

MR SUMPTION: I'm sorry, my Lady?

MRS JUSTICE GLOSTER: It's paragraph 419.

MR SUMPTION: I'm sorry if I've got that wrong. Yes, 419, forgive me.

Mr Abramovich and Mr Hauser both gave unchallenged

evidence on this point that the Bratsk assets were in fact added later, after the merger, and were what gave rise to the 15 May revision. Again, in the same place, 419, sub 6, it may assist if I gave your Ladyship the reference as to that evidence. It's Abramovich, Day 24, pages 42 to 43, and Hauser, Day 31, pages 49 to 51.

Now, this suggestion of course is also, as is obvious, inconsistent with the terms of the 15 March sale and purchase agreement, which doesn't include the Bratsk assets, whereas the 15 May agreement does. The suggestion that there was no time to deal with it between the Dorchester Hotel meeting and the 15 March agreement is, in our submission, ridiculous.

Under the preliminary agreement, the parties to that agreement had until 20 March to execute the definitive sale and purchase agreement, and Mr Hauser's evidence was that all the outstanding points were referred up to the principals at a long late night meeting, which I've already referred to, on the night of 14 to 15 March. The agreement was executed the next morning. So there is simply no scope for the purely imagined lack of time which resulted in its being omitted from that agreement.

Now, the only key term identified by Mr Berezovsky which was not included in the preliminary agreement was the no selling without consent provision, which

Mr Berezovsky says was agreed but which, in our submission, was not agreed. In our submission, it cannot have been agreed because not only is it not in the preliminary agreement but it isn't in the sale and purchase agreement of 15 March either.

Moreover, this no selling without consent agreement is a commercial nonsense which is most unlikely to have been agreed at any time, and the denials of Mr Abramovich, Mr Shvidler and Mr Deripaska that they had agreed any such thing seem wholly convincing. This is a no selling out without the consent of the others agreement, which would also, according to Mr Berezovsky, have been binding on Mr Deripaska. And its supposed justification was that each party needed to be protected against being left with a minority stake and thereby (inaudible) a controlling majority shareholder which would have reduced the value of this party's stake.

Now, that would have been a problem only if one of the four parties to the alleged agreement, about not selling out, wanted to sell to another party to that agreement. The problem is that the alleged term would have prevented any of the three of them from selling out -- or the four of them, I suppose -- from selling out even to a third party, although that would actually have made no difference to the balance of power among

the original shareholders. In fact, the suggested term would have prevented Mr Deripaska from breaking up his stake and selling it piecemeal to third parties which, on the face of it, would actually have increased the value of the remaining 50 per cent, turning it into a strategic stake when it would previously not have been.

MRS JUSTICE GLOSTER: Is there any reference to such a term or the discussion of such a term in any of the documents relating to the --

MR SUMPTION: Not one.

MRS JUSTICE GLOSTER: -- later agreement?

MR SUMPTION: This is a proposition that is to be found in one place and one place only, namely Mr Berezovsky's oral evidence.

I don't think there's a reference to it in Mr Patarkatsishvili's notes.

MR RABINOWITZ: I think there is.

MR SUMPTION: But I ought to check that.

What Mr Patarkatsishvili said in the note that I can recall, and I will have this checked, is that it was a matter of Russian business practice, but --

MR RABINOWITZ: With respect, that's not right.

MR SUMPTION: There is a reference, is there, to him having agreed it?

MRS JUSTICE GLOSTER: Mr Rabinowitz, I was asking actually about later agreements, but --

MR SUMPTION: The later agreements --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

You say there's a reference in Mr Patarkatsishvili's notes, is there?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Can you give that to me in due course?

MR RABINOWITZ: We will dig it up and get it to you, but there is a reference.

MRS JUSTICE GLOSTER: Yes, but do you agree there's no reference in any of the documents relating to the subsequent agreement?

MR RABINOWITZ: Yes, my Lady, I accept that.

MR SUMPTION: Apart from Mr Patarkatsishvili's notes, which we will check.

MR RABINOWITZ: Your Ladyship sees it's set out in Mr Patarkatsishvili's note. The relevant part is set out at paragraph 1215 of our closing, page 703.

MRS JUSTICE GLOSTER: Right, just a second, I just want to make a reference to paragraph 1215 of your closing.

MR RABINOWITZ: Page 703, it's the last line of that page.

MRS JUSTICE GLOSTER: Yes. Very well, thank you.

MR SUMPTION: Apart from possibly Mr Patarkatsishvili's note, this is something that is referred to by

Mr Berezovsky in his witness evidence. There is no contemporaneous documentation for it at all although, of course, this part of the transaction is unusual by the standards of this case in being extremely fully documented.

It's the final part in the quotation at paragraph 1215, I think, that is Mr Rabinowitz's best point to extract from the Patarkatsishvili notes. We have dealt with this at subparagraph 7 of paragraph 536 where the same references I think will be found.

Now, this supposed term would of course have enabled any shareholder to force another shareholder who wanted to leave to sell to him on his own terms by refusing consent to a sale to anyone else.

Mr Deripaska's denial that he ever entered into such an agreement, in those circumstances, seems wholly convincing.

MRS JUSTICE GLOSTER: Mr Rabinowitz, where is the reference to the nondisposition by any of the shareholders?

MR RABINOWITZ: If your Ladyship has paragraph 1215, it runs on for a few pages, your numbering may be different to mine, there is a very long extract under subparagraph 2 of 1215. It's the last quotation mark.

MRS JUSTICE GLOSTER: Right, it's in there, is it?

MR SUMPTION: It's the last paragraph on page 703 of the

quotation that I understand that Mr Rabinowitz principally relies on.

MRS JUSTICE GLOSTER: We've all got different page numbers.

MR RABINOWITZ: It's just before 1216 begins, my Lady.

MR SUMPTION: Now, that is a reference to the --

MR RABINOWITZ: Your Ladyship may also wish to look at footnote -- sorry, I apologise to my learned friend.

MRS JUSTICE GLOSTER: Go on, Mr Rabinowitz.

MR RABINOWITZ: Footnote 63, I'm told, is another reference. Your Ladyship will find that on page 58. It's a reference to the June 2005 meeting.

MRS JUSTICE GLOSTER: Right, thank you.

MR SUMPTION: My Lady, that is a reference to the 2007 notes where there is obviously a problem about Mr Berezovsky's participation in the meetings as well. Your Ladyship has gone through that with the witnesses who were there. But for your Ladyship's note, or the transcript, paragraphs 535 and 536 of our document go through in detail all of Mr Patarkatsishvili's observations on the subject, both the proofs and the successive notes, and deal with this point very fully. They contain the references that my learned friend relies on as well as the ones that we rely on.

In our submission, there is no substance in the suggestion that Mr Patarkatsishvili's notes give any

reliable support to this and, in a very heavily documented part of the agreement, its absence both from the preliminary agreement and the sale and purchase agreement is absolutely inexplicable if it was actually agreed at the Dorchester Hotel meeting.

Now, none of the people, it is worth noting, who were in the process of finalising the terms of the sale and purchase agreement was present at the Dorchester Hotel, and none of them, according to their evidence, was aware of the Dorchester Hotel meeting. None of them was given to understand that they should wait for instructions that might depend on the outcome of the Dorchester Hotel meeting, and that further underlines the high degree of improbability that anything of substance relating to the merger was agreed at that meeting.

It is right, I would suggest, to point out in addition that it is common ground -- I say that because of what is said by my learned friends at I think paragraph 1212, sub 2 of their closing -- that Mr Deripaska did not get on with either Mr Berezovsky or Mr Patarkatsishvili, and had a particular dislike of Mr Patarkatsishvili. Now, Mr Abramovich explained the reasons for that in the recent history of the aluminium wars. It must, I would suggest, be most unlikely that

Mr Deripaska would have agreed to enter into a close business relationship, indeed, if the no selling out clause was agreed, an unbreakable business relationship, with people whom he didn't like.

Finally it is the case, and I don't think the contrary has been suggested by any witness, that neither Mr Berezovsky nor Mr Patarkatsishvili had any involvement in the negotiation of the restated agreement of 15 May. Mr Hauser's evidence was that neither of them was even mentioned in the course of the negotiations for that agreement. Nor, it has to be said, were they involved in the creation of Rusal which did not actually come into being until the end of 2000. The references to that are at paragraph 419 of our document.

It seems most surprising, if Mr Berezovsky and Mr Patarkatsishvili were in reality parties to the deal and part owners of the enterprise, that they had no participation or involvement in either the addition of the Bratsk assets culminating in the agreement of 15 May, or the creation of Rusal later in the year.

Now, as in the case of the master contract of February, Mr Berezovsky claims to have been an undisclosed party to the preliminary agreement by virtue of the reference in the pre-amble to "partners of

party 1", and to have been an undisclosed party to the share sale and purchase agreement because of the reference to "other selling shareholders" in that agreement.

The problem about this argument is that neither Mr Berezovsky nor Mr Patarkatsishvili had anything to do with either of those instruments. Mr Berezovsky says he didn't even see them until they were disclosed in this litigation. There's actually no reason to suppose that Mr Patarkatsishvili had seen them either. So it's hard to see why, in those circumstances, these phrases should be taken as references to them. Now, dealing with the two agreements in turn, first of all, the preliminary agreement, evidence on this point was given by Mr Abramovich, Mr Shvidler, Mr Deripaska and, by witness statement, Mr Bulygin, and is summarised at paragraphs 423 to 426 of our document.

The evidence given was that there were two basic concerns which underlay the reference to partners in the preliminary agreement. One was that if there were any undisclosed interests standing behind one of the nominal parties to the preliminary agreement, there was a concern that those undisclosed parties should be bound. Nobody had Mr Berezovsky or Mr Patarkatsishvili in mind. The background to this is an industry which

was riven by rivalries and mutual distrust, as many witnesses explained to your Ladyship. Mr Bulygin, who drafted this agreement, actually assumed that Mr Shvidler was a partner of Mr Abramovich. He was wrong about that, but it certainly was not his understanding that it was Mr Berezovsky.

The other concern that appears from the evidence is that both sides were concerned that the other might be a front for other parties with whom they would not wish to be in business. The main concern on both sides appears to have been the possibility that the Trans-World Group, having apparently sold out of the aluminium industry in February, might be coming back in through nominal holders. That was why --

MRS JUSTICE GLOSTER: That's the Reuben brothers, is it? Or it was partly --

MR SUMPTION: It's the Reuben brothers among others. That seems to have been why clause 4.1 warranted that the principals and their partners did not include the Trans-World Group. That was clause 4.1 of the preliminary agreement.

Turning to the "other selling shareholders" referred to, so the corresponding phrase in the share sale and purchase agreement of 15 March, that point I would suggest was comprehensibly dealt with by Mr Hauser. He

was a witness who was not beholden to either side, and his evidence is summarised with relevant references at paragraph 427 of our document.

His evidence, in summary, was that the term was used for precautionary reasons in case it should turn out that there were other interests involved. It was not used because anybody thought that there necessarily were other interests involved, and nobody had any particular other interests in mind. Mr Hauser's assumption, though it was only an assumption, was the same as Mr Bulygin's, namely that if Mr Abramovich did have a partner or a co-vendor then it was likely to be Mr Shvidler.

Mr Berezovsky's written closing on the Rusal aspect of this case is based almost entirely on what is at best circumstantial evidence, most of it dating from much later, and also on documents suggesting that persons who, in most cases, had no particular means of knowing the truth were assuming that Mr Berezovsky did have an interest in Rusal.

Now, in our submission, the evidence about the way in which the acquisition of the KrAZ and Bratsk assets happened, and the merger agreement was negotiated, simply doesn't admit of the possibility that Mr Berezovsky and Mr Patarkatsishvili were undisclosed parties to those agreements, or that they had any

interest resulting from those agreements. There is no basis on which such an interest could have been acquired by them under the supposed 1995 agreement, even on the footing that its terms were as alleged by Mr Berezovsky.

There is no point in the negotiations which one can identify at which it could have been agreed to confer such an interest on them if they didn't get it by virtue of the 1995 terms. None of the occasions on which it is said by Mr Berezovsky to have been agreed can actually be reconciled with the evidence, including his own evidence, and there is nothing that Mr Berezovsky had done which would have warranted giving him a buckshee interest in these assets. He did not contribute to the cost, he did not contribute contacts, he didn't contribute business ideas, he didn't contribute management expertise. He remained of course Mr Abramovich's political protector, but he was being very handsomely paid for that without any need to give him a gift of a large interest in the aluminium industry.

Now, Mr Patarkatsishvili of course did contribute a great deal to the acquisition of the pre-merger aluminium assets and therefore indirectly to the merger. He was the source of the original proposal, he was an important facilitator. He also made, as is clear,

a significant contribution to ending the gang warfare that had destroyed the profitability of these businesses under their previous owners. But Mr Berezovsky contributed zilch to that, and nothing to the merger agreement either.

My Lady, does your Ladyship have a particular time in mind?

MRS JUSTICE GLOSTER: Yes, I'll take the break now. Very well.

(11.27 am)

(A short break)

(11.39 am)

MR SUMPTION: My Lady, just two grace notes to what I've already said to your Ladyship. First of all, the 15 May agreement. I should I think have pointed out that the 15 May agreement wasn't just an agreement which added the Bratsk assets to the merger, it also added assets on Mr Deripaska's side, in particular the Sayansky plant. And the 175 which was added to the equalisation payment reflected the difference in value between the Bratsk plant, which was one of the largest aluminium smelters in the world, and what Mr Deripaska was contributing.

The second point that I should perhaps briefly mention, I don't want to make a great song and dance about this, but I don't want it to be suggested

subsequently that I have by silence conceded the points that are made by my learned friend in his written closing about what one can loosely call the dressing gown incident. They say that this was a result of collusion between our witnesses. There is not a trace of any suggestion to that effect in the evidence, and indeed, while it was put to them that they made that up, the suggestion that they did so in collusion was certainly not put to them and, in my submission, that aspect of their case, although it occupies quite a number of pages of their document, can safely be ignored.

Returning to where I had reached when your Ladyship rose, the absence of any evidence that makes it possible to identify any occasion on which this interest might have been agreed is, I would suggest, an unpromising starting point for Mr Berezovsky's argument that common reputation or subsequent events and documents show him to have had an interest. In our submission, it cannot be good enough, in a case like this, to say, "Well, we actually haven't a clue how he acquired his interest, but at some stage later he behaved as if he had one and a number of other people assumed that he did, therefore never mind the terms of the agreement on which this interest is said to be based." Because your Ladyship

does, with respect, have to have a clue about how he acquired it if you are to be satisfied that he actually did.

Now, the subsequent events on which Mr Berezovsky relies for these purposes are, listing them, the Le Bourget transcript again, the internal planning documents, the Curtis notes of August 2003, the alleged distribution to Mr Berezovsky and Mr Patarkatsishvili of Rusal profits, the terms of the July 2004 documents for the sale of the second tranche and the Patarkatsishvili interview notes. Now, I don't wish to take up too much time on these matters since I have already dealt with them very fully in the written closing, but if I may summarise the position with an eye to the points made by the other side.

The argument based on the Le Bourget transcript depends on an extraordinarily narrow point. The argument is that the use by Mr Abramovich of the plural "we", when referring to his holding in the merged aluminium business, is an admission that he held it together with Mr Berezovsky and Mr Patarkatsishvili. Whereas Mr Abramovich says that he was simply referring to his side as opposed to the Deripaska side of the merger.

The references to this matter are at paragraphs 429

to 432.

MRS JUSTICE GLOSTER: Yes, I have those.

MR SUMPTION: The internal planning documents are dealt with in the next three paragraphs. They are documents generated after 2000, some of which assume an interest of Mr Berezovsky and Mr Patarkatsishvili in the merged aluminium business. These are all documents wholly internal to Mr Berezovsky and Mr Patarkatsishvili and their staff and professional advisers. None of them are self-explanatory and none of them have been explained by any of Mr Berezovsky's witnesses, but all of them must presumably have been based on information supplied by Mr Berezovsky or Mr Patarkatsishvili, or possibly Mr Fomichev. Some of them appear to have been design documents for a variety of money-laundering schemes.

There are only two on which some comment is perhaps called for although I think they are the two on which my learned friends rely most heavily. The explanatory note and the Curtis notes.

The explanatory note is an undated anonymous note prepared for an uncertain purpose which was found in the office of Mr Patarkatsishvili's financial manager, Mr Joseph Kay. Some seven paragraphs of my learned friends' written closing, at paragraphs 1247 to 1254, eight paragraphs, forgive me, are devoted to trying to

prove that Mr Streshinsky was the author of the explanatory note, but nothing in the eight paragraphs in question actually does support that suggestion which Mr Streshinsky himself vigorously denied when it was put to him.

The note in fact contains quite a large number of errors, in particular it assumes that the four BVI holding companies which acquired the KrAZ and Bratsk assets belonged to Mr Berezovsky, something which not even he has suggested, and it also asserts or assumes that Mr Berezovsky and Mr Patarkatsishvili owned Aeroflot, or a large part of it, which is acknowledged in this litigation to be untrue.

Now, this note appears to have been drawn up with a view to pretending that Mr Berezovsky and Mr Patarkatsishvili were the owners of assets in cases where their ownership might explain some of their income streams. That is obviously the case in the case of Aeroflot. It looks very much like a money-laundering exercise but it is hard to be sure about that on the very paltry information we have about this rather incoherent document.

Now, the Curtis notes require a bit more attention but not much more --

MRS JUSTICE GLOSTER: Just before you go there, the

reference to the Kay note is your footnote reference 1579, is it?

MR SUMPTION: Let me just check that. 1578 I think.

MRS JUSTICE GLOSTER: Well, that doesn't seem to have a document reference in it.

MR SUMPTION: The document reference is 1579, yes.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: I think it's common ground where it was actually found. The most plausible inference is that if it was found there, it was Mr Kay's document, and he was certainly a person intimately concerned in drawing up plans for what to do about Mr Patarkatsishvili's and Mr Berezovsky's assets. But really, apart from speculating on these possibilities, we don't have much to go on.

Now, the Curtis notes are dealt with in the next five paragraphs or six paragraphs of our document. These notes were prepared after or at about the time of an informal social lunch at Mr Patarkatsishvili's house in Georgia. The people present were Mr Patarkatsishvili, Mr Fomichev, Mr Tenenbaum and Mr Curtis, and a large number of other people including several children and a gentleman called Igor who has not been further identified.

Mr Tenenbaum had gone to this lunch at

Mr Abramovich's request to talk to Mr Patarkatsishvili about his plans to invest in a football club as Mr Abramovich himself had recently done by buying Chelsea Football Club. Mr Tenenbaum had in fact been closely involved in the acquisition of Chelsea which is why he was sent off for that purpose.

MRS JUSTICE GLOSTER: This was the Brazilian one, was it?

MR SUMPTION: Well, ultimately it turned out to be the Brazilian one, and there are passages in my learned friends' written closing when they cite a money-laundering enquiry document from Brazil, which is not actually an investigation into Mr Patarkatsishvili's affairs at all, but it refers to a meeting which they, for some reason, suggest must have been the only meeting or the first meeting that Mr Patarkatsishvili attended to acquire this Brazilian club, and suggest that, therefore, he can't in 2003 have been discussing such a plan with Mr Tenenbaum.

I'm perfectly content to leave your Ladyship to read that part of my learned friends' closing in due course. It doesn't appear to carry matters any further.

Mr Curtis, for his part, appears to have gone to this meeting in order to get evidence which could be used to prove that Mr Patarkatsishvili, for whom he was at this stage acting, had an interest in Rusal. Now,

the reason why Mr Curtis wanted that evidence is, in fact, explained by the evidence given about events over the previous six months before this meeting. That evidence is that at the beginning of 2003 Mr Abramovich was considering ending his joint venture with Mr Deripaska and he therefore had to deal with the question that should be left over of Mr Patarkatsishvili's commission.

So he met Mr Patarkatsishvili in February 2003 and told him that he was thinking of pulling out of the joint venture with Mr Deripaska and initiated discussions on this subject. We give the references to that at paragraph 450 of our document. Now, it must be obvious that that would have immediately raised in Mr Patarkatsishvili's mind the problem of legalising his receipts in the face of western money-laundering enquiries.

Your Ladyship will recall that, according to Mr Abramovich, Mr Fomichev had suggested previously, in late 2000, that future payments by Mr Abramovich to Mr Berezovsky and Mr Patarkatsishvili should be covered for money-laundering purposes by transferring shares in Sibneft to them so that they could receive payment of dividends. That's a matter discussed at the Le Bourget meeting.

Now, a variant of this scheme was obviously being considered by Mr Patarkatsishvili shortly after his meeting in February 2003 with Mr Abramovich. That must be so because, at some stage shortly after that meeting, he instructed Mr Curtis to draw up an agreement for the transfer of 25 per cent of Rusal to himself and its registration in his own name. The draft agreement that Mr Curtis drew up for that purpose is in the bundle -- I won't ask your Ladyship to turn it up, but it's at H(A)56/215, and it's dated April 2003, about two months after his meeting with Mr Abramovich.

Mr Berezovsky said about this in his oral evidence, that this document, the draft agreement, was related to a proposal in about April 2003 that Mr Patarkatsishvili should sell his and Mr Berezovsky's shares in Rusal. It may well be that this particular draft document is associated with a plan by Mr Patarkatsishvili to have Rusal shares transferred to him so that he could sell them, but that was nothing to do with any interests of Mr Berezovsky. The draft that we have identifies Mr Patarkatsishvili and Mr Patarkatsishvili alone as the transferee. Nothing to do with Mr Berezovsky.

The problem of course that Mr Curtis faced, as Mr Patarkatsishvili's legal adviser, was the absence of any evidence that Mr Patarkatsishvili had ever had an

interest in Rusal. That was a matter which had caused him concern in relation to Sibneft back in 2000 and that concern resurfaced in 2003 in relation to Rusal. That appears to be why Mr Curtis refers, in the note itself, to, as he puts it, the importance of creating proof of ownership and it may also be why he labelled the note as vitally important in his post-it instruction to Ms Flynn.

We give the references to that at paragraph 440, sub 6 of our document, in particular notes 1624 and 5.

What seems clear is that this note cannot be a contemporaneous record or a direct record of anything heard by Mr Curtis at this lunch. Mr Tenenbaum was adamant that nobody was taking notes at what was, on the face of it, a social lunch, and says, plausibly I would suggest, that he would certainly have asked for a copy if they had been taking notes. The conversation was in Russian, which was the language that Mr Tenenbaum spoke to Mr Patarkatsishvili, and the language of everybody else present except for Mr Curtis himself who did not understand Russian.

It follows that the note must necessarily have been derived from something that somebody else said to Mr Curtis presumably afterwards. Now, I am not going to invite your Ladyship to attach too much weight to the

double hearsay statement of Mr Tenenbaum in his evidence, that Mr Fomichev subsequently told Mr Shvidler that he had dictated the note to Mr Curtis after the meeting was over, but it is clear that something of that sort, whoever was involved in it, must have happened.

We know that neither Mr Curtis nor Mr Fomichev were overscrupulous in the matter of generating documents. That is apparent from the Spectrum transaction and the Devonia transaction in which both of them had been intimately concerned. We know that the language problem, and the language that was being used at this meeting, was such that Mr Curtis cannot have heard these remarks himself.

Mr Tenenbaum is adamant that, having gone to Georgia to talk about the acquisition of football clubs, he would not have discussed Mr Abramovich's personal financial affairs with a large number of relative strangers. The only response to that point is that my learned friends have suggested in their written closing that he would have been quite likely to discuss these matters because Mr Curtis was well-known to Mr Abramovich and Mr Shvidler. He was not well-known to either of them. They had met him about ten years before when he had briefly tried to interest them in a proposal about arms selling in which they were not interested.

Mr Tenenbaum, so far as the evidence showed, had never come across Mr Curtis at all.

Now, there is in addition an argument, again ventilated in my learned friends' written closing, that some of the information attributed to Mr Tenenbaum would only have been known to him. That also is incorrect. We have dealt with that suggestion at paragraph 440, sub 5 of our closing. There is no substance in the point because it can in fact be shown, for the reasons we give there, that as a result of his involvement in the various financial transactions that had occurred since 2000, the information in question would actually have been very well-known to Mr Fomichev, indeed better known to Mr Fomichev than is likely to have been known to Mr Tenenbaum.

Now, in this particular context, I should mention two related side issues raised in Mr Berezovsky's written closing. One is that it is said that Mr Tenenbaum's reference to the Dr Evil text message sent by Mr Berezovsky to Mr Fomichev must have been an invention, and that the mention of it by Mr Tenenbaum discredits him as a witness. I have not relied on that part of Mr Tenenbaum's evidence and I don't intend to do so for reasons I'll come to in a moment, but I reject entirely the suggestion that it was untrue, a suggestion

that is not supported by any evidence other than the assertion of Addleshaws in correspondence.

MRS JUSTICE GLOSTER: Well, isn't the point that it would be there for somebody to look at?

MR SUMPTION: Well, it wouldn't necessarily be there. It depends on what your practice is about keeping text messages, old text messages on your mobile.

My Lady, the whole issue is bound up with the second side issue raised in Mr Berezovsky's written closing which concerns the position of Mr Fomichev. Both sides have had some contact in the course of this litigation with Mr Fomichev in relation to these proceedings. That is established from the evidence in the summary judgment proceedings, and I'll just give your Ladyship the references. Marino 2, paragraph 97 on my learned friends' side, and Mitchard 3, paragraph 45, deal with some of the matters that they have ascertained from Mr Fomichev. In addition, some of Mr Abramovich's witnesses have referred to contact with him on our side, including Mr Tenenbaum.

My learned friends in their written closing on behalf of Mr Berezovsky have said that I should, in those circumstances, have called Mr Fomichev on behalf of Mr Abramovich. Now, I was not and am not prepared to call Mr Fomichev for a perfectly straightforward, indeed

obvious reason. Mr Fomichev was, throughout the relevant periods, the agent of Mr Berezovsky. It is part of my case that in that capacity Mr Fomichev was directly engaged in the preparation of sham documents evidencing bogus transactions for the purpose of laundering Mr Berezovsky's money. It would have been perfectly absurd for me to call Mr Fomichev bearing that in mind. Indeed, on some of the more important issues, I would suggest that any competent legal adviser would have advised Mr Fomichev to rely on the privilege against self-incrimination in answering questions on that part of the case. I therefore find it hard to take seriously my learned friends' suggestion that I should reasonably be expected to call Mr Fomichev.

Now, having taken that course, ie the course of not calling Mr Fomichev, it followed that I could not properly deploy hearsay evidence derived from Mr Fomichev since I would not have been willing to call him in response to a counter-notice. I therefore reject the suggestion that any adverse inferences should be drawn from that.

In particular I reject the main inference which my learned friends have sought to draw from it, which is that Mr Fomichev would have confirmed that there was an onsale by Devonia to Mr Abramovich. Mr Mitchard's

evidence in the summary judgment proceedings was in fact that Mr Fomichev had confirmed that there was no onsale. Now, I haven't and I don't rely on Mr Mitchard's evidence in the summary judgment proceedings to show that there was no onsale, there is plenty of other evidence to show that there was no onsale, but I do rely on it to rebut the suggestion that's now being made that a concern about Mr Fomichev's answers on that subject is the reason why he has not been called. It isn't.

Now, if I may return to the real issues, the issue of the alleged distribution of dividends in Rusal is the next matter on which Mr Berezovsky relies. This relates to $175 million, which is described as constituting Rusal dividends paid to Mr Berezovsky and Mr Patarkatsishvili between 2003 and 2005.

The underlying facts are extremely complex and are covered with very full references between paragraphs 442 and 448 of our document.

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

MR SUMPTION: Now, it's not something about which Mr Berezovsky has been able to give evidence; as he acknowledged, he wasn't concerned in that. This was a point that originated with Mr Marino who asserted in his witness statement in the summary judgment application that that 175 million represented a share of

Rusal profits.

Now, he was actually mistaken about this, and I'll explain how the mistake arose. The 175 million was part of a larger sum of 377.5 million which was paid to companies designated by Mr Berezovsky and Mr Patarkatsishvili under an agreement made between Mr Abramovich and Mr Patarkatsishvili in June 2002. The evidence that has been given by Mr Abramovich is that he agreed to pay a further 377.5 million on top of the 1.3 billion which had already been paid from May 2001 in order to compensate them for, first of all, the interest loss attributable to the fact that the 1.3 billion had been paid in instalments, and, secondly, the fact that commissions had been paid to the sheikh to legalise the payments. That was actually the first time that Mr Abramovich had learnt of the involvement of the sheikh in the transmission of the 1.3 billion.

Subsequent evidence has established that although Mr Berezovsky initially, and maybe still, denies that any more than 175 million was received out of the 377.5 million, the appearance later in the trial of the Latvian Trade Bank statements establishes that the full amount was in fact received. Indeed, there is an element of common ground about this because Mr Berezovsky confirms in his witness statement that

Mr Patarkatsishvili had in fact asked for this payment. His evidence is that he and Mr Patarkatsishvili discussed asking Mr Abramovich to make a payment in compensation for these matters, and what Mr Berezovsky says is that Mr Patarkatsishvili went off and asked Mr Abramovich but he said no. Whereas Mr Abramovich's evidence is that there was indeed such a request and he agreed to it.

The fact that 377.5 million was actually paid tends very strongly to support Mr Abramovich in his recollection of that particular occasion.

The reason, and the only reason, why Mr Marino believed that that sum was a Rusal dividend was that the money came from Rual Trade Limited, which was a trading company jointly owned by Mr Abramovich and Mr Deripaska, which marketed the output of Rusal and its various subsidiaries. Now, that of course doesn't mean that it's a Rusal dividend. It only means that it was the source from which Mr Abramovich obtained the money which he paid to Mr Patarkatsishvili and Mr Berezovsky. As it happens, and it's a good illustration of this point, the 1.3 billion which was agreed to be paid in May 2001 was also paid from Rual, but nobody has suggested that that was a Rusal dividend, and it hardly could have been. It is important to distinguish between the place where

Mr Abramovich gets the money and the basis on which it is being paid.

Finally, there are the terms of the July 2004 sale of the second tranche of Rusal shares, which have given rise to a lively debate in the last few days of the evidence, plus the negotiation of those terms, which are together said to show that Mr Berezovsky and Mr Patarkatsishvili had an interest in Rusal.

The background to these rather complex arrangements is summarised in our document, I'm afraid at some length, between paragraphs 449 and 455. In summary, and I'll deal with it very shortly, Mr Abramovich had decided in early 2003 to sell out of all his joint ventures with Mr Deripaska. Both Mr Abramovich and Mr Deripaska gave evidence that in 2003 they had agreed on a total price of 2.3 billion but Mr Deripaska had been unable to raise more than 1.9 billion of that.

Now, the deal that they reached was therefore that Mr Abramovich would sell to Mr Deripaska the first tranche of 25 per cent in Rusal, plus his interests in all their other jointly-owned businesses in the automotive industry et cetera, for 1.9 billion, and the second tranche of Rusal would be sold for 450 million when Mr Deripaska could raise the money to buy it. Of course, since most of the purchase price was being

loaded on to the first instalment, the parties knew that it would be very much in the interest of Mr Deripaska to complete the second one as well.

At the time when Mr Abramovich resolved to pull out of the joint venture with Mr Deripaska, he broached with Mr Patarkatsishvili, initially in February 2003, the question of his commission, and the deal that was finally agreed between them in October 2003 was that he would be paid a commission of 585 million. That reflected the fact that the aluminium holdings had been prodigiously profitable, and Mr Patarkatsishvili had made that possible, first, by bringing about the original acquisition, and, secondly, by helping to bring an end to the aluminium wars.

After agreeing the amount of the commission, Mr Abramovich and Mr Patarkatsishvili discussed how that amount was going to be paid in a way which would satisfy the compliance departments of western banks. Now, it was therefore agreed that as and when Mr Deripaska was in a position to buy the second tranche of Rusal, Mr Abramovich would transfer it to Mr Patarkatsishvili so that he could sell it on to Mr Deripaska at the agreed price of $450 million, leaving 135 million to be settled in some other way.

The second tranche sale documents, all dated

20 July 2004 were designed not just to transfer the shares to Mr Deripaska but to settle the debt of 585 million owed to Mr Patarkatsishvili in a way which would generate documentation to satisfy western banks.

Now, the sale was accomplished by a number of different contracts. We've summarised them at paragraphs --

MRS JUSTICE GLOSTER: Can you just help me on this. The transfer to Mr Patarkatsishvili by Mr Abramovich of the second 25 per cent tranche, was that done for no consideration -- well, no, as it were, stated consideration on the document --

MR SUMPTION: It was simply a transfer.

MRS JUSTICE GLOSTER: Simply a transfer?

MR SUMPTION: Simply a transfer, yes.

MRS JUSTICE GLOSTER: And the documents support that, do they?

MR SUMPTION: Yes, they do. The relevant document is at 456, sub 2, in our document.

Essentially, the deal therefore was that Mr Abramovich's aluminium holding company, Madison, would transfer the second 25 per cent of Rusal to a company nominated by Mr Patarkatsishvili.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Cliren, which he had acquired from Coalco

a week before. Cliren then sold it straight on, on the same day, to Mr Deripaska for 450 million. Now, at the same time, there was an agreement called the deed of accounting and release with Cliren which was an agreement under which it was agreed to pay the 135 million bringing the total sum paid to Cliren to the 585 that had previously been agreed.

MRS JUSTICE GLOSTER: Yes, I remember this now.

MR SUMPTION: In that document, the deed of accounting and release, the sum purported to be a dividend payable in respect of Rusal shares.

Mr Patarkatsishvili then entered into something called the beneficial owner deed of release, under which he represented and warranted that he was, and had since 15 March 2000 been -- I'll say a bit more about that -- the sole beneficial owner of the second 25 per cent tranche. There was then a deed of acknowledgement under which, in effect, Mr Abramovich represented to Mr Deripaska that he had dealt only with Mr Patarkatsishvili about this and that whoever Mr Patarkatsishvili said was the beneficial owner of the second tranche was the beneficial owner to the best of Mr Abramovich's knowledge and belief.

Now, what Mr Berezovsky does not of course say is that the terms of the second tranche sale documents

themselves support his claim to have had an interest in Rusal. The most that one could deduce from those documents, on one view of them, is that Mr Patarkatsishvili had such an interest and no one else. Mr Berezovsky's case is based essentially on the antecedent negotiations. What he says is that, in the course of the negotiations and drafting of these contracts, the various professional advisers to Mr Abramovich, Mr Deripaska and Mr Patarkatsishvili recognised among themselves that Mr Berezovsky did have an interest in Rusal and then, to use my learned friend's phrase, airbrushed him out of the contractual documents by the time they were actually executed on 20 July 2004.

Now, this suggestion is simply not justified by the facts and, in our submission, it was largely demolished by the evidence of Mr Hauser. As I pointed out already, Mr Hauser was not a witness beholden to anybody. He was called by us under subpoena, having declined to give us a witness statement, and he certainly had no emotional or financial interest in the outcome of this issue or any other. Mr Hauser's evidence was supported by that of Mr Anisimov and Mr Streshinsky who acted for Mr Patarkatsishvili.

Now, the position was complicated by the number of

professional advisers involved and by the fact that they were at cross-purposes for a large part of the time when they were dealing with this documentation. But the essential problem, as your Ladyship will recall, is that in early June 2004, shortly after the negotiations had begun, Mr Berezovsky, having apparently heard that negotiations were in progress, announced in the press that he had an interest in the assets being sold and would, if necessary, resort to the courts to block the sale. That caused, as one can understand, an enormous flap among the various legal advisers who were, of course, concerned that their principals could find themselves liable at some later stage to Mr Berezovsky for infringing the rights that Mr Berezovsky was claiming in the public prints to have possessed.

MRS JUSTICE GLOSTER: You've set that all out in great detail, what your submissions are.

MR SUMPTION: We have, yes.

Of course, ultimately, both Mr Abramovich and Mr Patarkatsishvili, according to Mr Hauser, denied that Mr Berezovsky had any interest and, therefore, this aspect of it faded away. But the form of the contractual documents was not the result of the lawyers airbrushing Mr Berezovsky out of the picture; it was the result of their having received instructions that he had

never been in the picture in the first place.

Now, neither the negotiations nor the contracts as executed therefore support this suggestion. On their face -- the one exception is, of course, that on its face the beneficial owner deed of release does support the suggestion that Mr Patarkatsishvili had an interest in the Rusal shares being sold that extended beyond the interest that was specifically created for him on 20 July itself, and it does that because the beneficial owner deed of release contains a warranty of historic title, ie not just that he was the beneficial owner at the date of sale but that he had been continuously from 15 March.

Now, that provision did not actually reflect the facts and the reason why it was included was the subject of some extensive evidence given in cross-examination and to some extent in chief by Mr Hauser on behalf -- who was acting on behalf of Mr Deripaska. His evidence was that he required this because he believed, rightly or wrongly, that without a historic warranty, Mr Deripaska would be exposed to a claim from Mr Berezovsky if it should one day turn out that there had been some intermediate stage at which he did have an interest, and if there was some uncertainty about the circumstances in which he had parted with it.

Mr Hauser's evidence makes it perfectly clear that this was not because he believed that Mr Berezovsky had such an interest, it was because he didn't know and wanted watertight contractual provisions for his client.

Your Ladyship may find it useful to add to paragraph 461, sub 23, a reference to Hauser, Day 31, pages 90 to 92, where he deals specifically with the concerns that led him to include and insist on the inclusion of the historic warranty.

Of course, none of these considerations assist Mr Berezovsky. Mr Patarkatsishvili made a great deal of money out of the Rusal transaction, and it may be that his private arrangements with Mr Berezovsky were such that Mr Berezovsky was entitled to a share of that. Now if, contrary to the submissions that we have been making, the money that Mr Patarkatsishvili made out of the Rusal transaction was in reality the price of a proprietary interest of his in the business, then it may be that the private arrangements he had with Mr Berezovsky were such that Mr Berezovsky shared in that interest.

But if so, those are rights that would be purely and simply rights as between Mr Patarkatsishvili and Mr Berezovsky. Mr Berezovsky is not, of course, entitled in this action to bring a claim against my

client on the basis of a right derived simply from his agreement with Mr Patarkatsishvili. The exact nature of that arrangement is something that will in due course have to be exhaustively investigated in the Chancery proceedings. We don't have the material to resolve it here, and that was essentially why your Ladyship declined to grant permission to add it by amendment at the case management conference in the summer.

Now, those are our submissions on the essential question whether there was ever an agreement to confer on Mr Berezovsky an interest in the aluminium assets or the merged assets.

Turning briefly to the English law trust that is alleged, which, in our submission, there never was an agreement to confer the interest, and one therefore doesn't get to the question whether that interest was held in trust for Mr Berezovsky or under what law. But if Mr Berezovsky did have an interest by agreement, or in any other way, in the aluminium assets, the question what law governed it then becomes a critical question because it's common ground that by Russian law any claim in respect of that interest would be time-barred.

It's probably a general rule in mitigation that the more remote an alternative case is, the more elaborate the arguments and sub-arguments which it generates and

the more disproportionate the time devoted to it. I will try to buck that trend if I may by dealing relatively briefly with matters that are more fully dealt with in our written closing at sections B3 and B4, paragraphs 467 and following.

MRS JUSTICE GLOSTER: I've read those.

MR SUMPTION: I'm not going to repeat those, but obviously Mr Berezovsky's primary case is that he and Mr Patarkatsishvili and Mr Abramovich agreed that the interests were to be held in an English law trust. What he says is that Mr Anisimov had advised him to do that, and that at some unspecified time there were discussions in which it was agreed that the merger negotiations, if they succeeded, would give rise to a new company which would be created in a proper British law way, and that their interests would be held under a trust by Mr Abramovich.

An agreement to that effect is actually said then finally to have been reached at the Dorchester Hotel meeting itself. Indeed, in his witness statement at paragraph 280, Mr Berezovsky goes further and says that at that meeting Mr Deripaska declared, in response to the others agreeing that their arrangements would be governed by English law, that, yes, he too would be holding part of his 50 per cent on trust for his

partners, whoever they might be. Now, that's Mr Berezovsky's version. All of these assertions, in our submission, are entirely untrue.

Mr Berezovsky claims that the proper law was a matter of great importance to him at the time, and he claims to have a distinct recollection of the discussions in question, both the previous discussions in Moscow and those which occurred at the Dorchester Hotel. Yet we know that in spite of that distinct recollection, the allegation was not made at any stage before the summary judgment application.

We have set out the history of the way in which this was taken at paragraph 484 of our document.

The reality is that Mr Berezovsky and his advisers have always been aware of the potential problem about this. We drew attention to it in our application for summary judgment, but since then we have learnt, as a result of disclosure by the family defendants, that the problem of the proper law was actually noted and understood by Mr Berezovsky and his advisers well before that because it's recorded at the meeting at Mr Patarkatsishvili's home in England in April 2007, where the note says:

"Rusal three-year limitation, Russian law."

We refer to that at 482, sub 1, 484, sub 1, and 486.

So this was an issue that was on the table at all times as far as Mr Berezovsky was concerned.

That makes it highly significant that until the summary judgment application the only point made about proper law had been that by implication it was to be any law other than Russian law, and preferably BVI law, by virtue of the intention of the parties to hold their interests in offshore structures.

I've already in opening taken your Ladyship to the material related to Ms Dohmann's application in Mr Berezovsky's presence, and I'm not going to go through that again. But it was in direct response to the reply served in October 2008, expressly founding his contention that English law, or BVI law, governed the arrangements by implication, that we made our application for summary judgment. So Mr Berezovsky's addition of this particular allegation about an express choice of law was a direct response to that application, and, of course, to Dr Rachkov's evidence on the summary judgment application, that the points that we were taking in relation to the proper law, namely that Russian law did not recognise the alleged trust and that it was time-barred, were actually correct.

So what happened was that Mr Berezovsky effectively pulled a rabbit out of a hat at a stage when otherwise

his claim in relation to Rusal would have been struck out. It was, in our submission, another Forbes moment when Mr Berezovsky asserted something because he needed to rather than because he thought it true.

Now, we know that Mr Berezovsky and Mr Patarkatsishvili attended at least five interviews with Mr Berezovsky's solicitors in 2007 alone. At at least two of which Rusal was discussed, and at at least one of which, the one in April, the problems arising out of the Russian limitation period were discussed. Therefore, the significance of the lateness and opportunistic character of the appearance of this issue is very great.

It's right to point out that, in addition, the allegation is in fact wholly inconsistent with the evidence that your Ladyship has heard. Mr Anisimov did not advise Mr Berezovsky to make his arrangements under proper British law. It's actually very difficult to see how the proper law of the arrangements for holding the interest can have been discussed, as Mr Berezovsky alleges, before the Dorchester Hotel meeting in Moscow. As your Ladyship knows, the merger proposal arose for the first time in the very beginning of March, and the negotiations were conducted in a hurry and in great secrecy.

Again, if I can invite your Ladyship to add a reference on this point in the light of the way the matter is put by my learned friends. If your Ladyship were to add to paragraph 417, sub 1, a reference to Mr Abramovich's evidence at Day 19, page 117, Ms Panchenko's evidence in her second witness statement at paragraph 54, and Mr Bulygin's witness statement at paragraph 18. Those passages emphasise the secrecy with which the merger agreement was negotiated because all the parties were concerned about the potential problem of a squeeze by the suppliers of raw materials if it became known prematurely.

So you have merger negotiations conducted in great secrecy, neither Mr Berezovsky nor Mr Patarkatsishvili are involved in them, and Mr Patarkatsishvili is told first about the merger by Mr Abramovich on the phone, very shortly before the Dorchester Hotel meeting. And Mr Berezovsky is told shortly afterwards by Mr Patarkatsishvili.

In the same place, your Ladyship might find it valuable to note the manner in which Mr Patarkatsishvili was told about the done deal, which is dealt with by Mr Abramovich at Day 19, pages 109 to 115.

Indeed, it's always nice to get some help from Mr Berezovsky on points like this. In his interview

with Vedomosti, which we have quoted at paragraph 409, sub 3, of our document, Mr Berezovsky told the press and thereby the world that he wasn't in Russia at the time, and was told about the merger after it had been agreed by Mr Patarkatsishvili on the telephone. So that his statement that he had discussed the choice of English law at meetings preliminary to the merger agreement, and preliminary to the Dorchester Hotel, with Mr Abramovich among others simply can't be true.

The discussion of the proper law is then said to have occurred at the Dorchester Hotel, but the evidence has been that the Dorchester Hotel meeting was not a meeting at which the terms of the merger were being discussed. There was a discussion of the fact that the merger had occurred, but there was no discussion of its terms and certainly no negotiation.

Now, as I've pointed out, the account in Mr Berezovsky's witness statement of Mr Patarkatsishvili, who had not been involved in these negotiations, suddenly explaining to those who had been that they had agreed that it was going to be governed by English law, which indeed they had in the preliminary agreement, is one of the more ridiculous parts of his evidence.

Every other witness present denies this story of

there being an agreement about the legal basis of arrangements between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich at the Dorchester meeting. Mr Patarkatsishvili said nothing about English law in his interviews, although, according to Mr Berezovsky, it was actually Mr Patarkatsishvili who had initiated this idea having received this advice from Mr Anisimov.

There is an alternative case that a choice of law is to be implied from the circumstances or imputed to the parties, and I should deal briefly with that. An implication is said in the pleadings to arise from the use of English law in other agreements, but the problem about this is that since Mr Berezovsky was not party to any of the other agreements, or indeed even aware of them at the time, it's rather hard to see how that could be a relevant consideration pointing to the choice of law in relation to this alleged agreement.

Mr Berezovsky claims that Mr Patarkatsishvili told him in advance that the merger would be governed by English law, but since Mr Patarkatsishvili was not party to the negotiations, and first heard of the deal after it had been done from Mr Abramovich, he could frankly not have known that or disclosed it to Mr Berezovsky.

I would perhaps also suggest that the reliance that Mr Berezovsky places on these other contracts is

something of a non sequitur. The fact that contracts are made under English law to acquire interests in the aluminium businesses does not give rise to an implication that the same law is to govern a distinct arrangement by which one of the parties is to hold his interest for another.

I would suggest that must especially be true if Mr Berezovsky establishes that, on whatever basis, the 1995 agreement was made in the terms that he alleges and was applied to aluminium. Because on that footing there was an existing relationship between the parties, unquestionably governed by Russian law, which Mr Berezovsky says was now being applied by agreement to aluminium. And it seems most bizarre to have a relationship between parties, an existing relationship governed by Russian law, but in which you single out one particular asset, namely the aluminium assets, as being held under an English law trust.

Now, on the footing that English law applies, there are a number of other issues which are a long way down the line and which I don't propose to deal with on my feet. Is the alleged trust good even in English law? If there was no express trust, was there nevertheless an agreement to pool assets of a kind that could give rise to a resulting or constructive trust? Was there

a breach of trust or contract on Mr Abramovich's part in selling the Rusal shares? Was any breach released by the terms of those agreements?

On those points I don't think there's anything that I can helpfully add to what I've put in my written submissions should those issues arise.

The only other matter which I want to deal with very briefly is to say something about my learned friends' written closing in general. If I were in a position to say to your Ladyship that I was satisfied with this document, Mr Rabinowitz and his team would not have been doing their job. One point, however, that I would make about it is that its authors have a regrettable habit of referring to points as being conceded or common ground when they are not, and I would invite your Ladyship not to take at face value, without reference to the alleged concession, any suggestion of that kind.

More generally we have the concerns that, inevitably in a hard-fought action like this, one does have about the accuracy and context of very many of the references that they give to the evidence. What I suggest is that the most efficient way of dealing with that is for us to serve a schedule of errors and omissions by paragraph of their document. It will not contain detailed further submissions but simply correct errors and omissions, and

we would be in a position to serve that by 12 January which is five days before we are due to resume to hear my learned friend Mr Rabinowitz's submissions.

We hope that's acceptable both to your Ladyship and to my learned friend.

MRS JUSTICE GLOSTER: Well, it's certainly acceptable to me. I'll hear from Mr Rabinowitz in a moment.

If you are disputing some of the asserted concessions, I would also direct you, Mr Sumption, or your team at any rate, to provide me with a similar schedule identifying --

MR SUMPTION: It will be included --

MRS JUSTICE GLOSTER: -- those asserted common ground propositions, and those which are common ground and those which are not.

MR SUMPTION: I will certainly do that, it will be included in the same schedule. I have dealt with what seemed to be the most significant on my feet, but we will give your Ladyship chapter and verse about those, certainly.

My Lady, those are my submissions.

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

Mr Rabinowitz, I propose to adjourn this case now until 10.15 on Tuesday, 17 January. I can't sit on the Monday.

I anticipate that on 17 January, you, Mr Sumption,

will not be appearing before me?

MR SUMPTION: **I will not.**

MRS JUSTICE GLOSTER: **I'm sure that the Bar would want to join with me in wishing you all the very best in your new career in another place.**

MR SUMPTION: **My Lady, I'm extremely grateful.**

MR RABINOWITZ: **My Lady, before your Ladyship rises, can I just say this. My learned friend has proposed giving us his document of what he calls errors and omissions by the 12th. Can I ask, my Lady, that that be given by the 10th, that's to say to give us a week to deal with it rather than just five days.**

MR SUMPTION: **We will do our best to get it to him by the 10th.**

MRS JUSTICE GLOSTER: **That seems reasonable enough.**

MR SUMPTION: **The problems are obvious, it's a very pernickety job if it's to be done properly, but we will try our very best to get it by the 10th.**

MRS JUSTICE GLOSTER: **Very well.**

MR RABINOWITZ: **My Lady, the only other thing I was going to say before your Ladyship rises is, if it would help, these are 935 pages available in A5 rather than A4. I appreciate having them in A4 is quite a lot to carry around. If your Ladyship would like --**

MRS JUSTICE GLOSTER: **Yes, I would very much welcome them in**

A5 if those could be provided to my clerk.

MR RABINOWITZ: We will arrange it.

MR SUMPTION: Would your Ladyship like our version in that format also?

MRS JUSTICE GLOSTER: No, because I've now marked the ones in A4, but if you provide me with them in A5, I will then mark those in A5.

Thank you very much.

(12.33 pm)

(The hearing adjourned until

Tuesday, 17 January 2012 at 10.15 am)

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