JUDICIARY OF
ENGLAND AND WALES

In the Commercial Court (Chancery Division)

31 August 2012

EXECUTIVE SUMMARY OF THE FULL JUDGMENT OF GLOSTER J IN

***Berezovsky v Abramovich* Action 2007 Folio 942**

Introduction

1. This is an executive summary of my full judgment in this action. The full judgment is the definitive judgment and this summary is provided simply for the convenience of the parties and the public.

2. In action 2007 Folio 942, which I shall refer to as the Commercial Court action, the claimant, Boris Abramovich Berezovsky sues the defendant, Roman Arkadievich Abramovich for sums in excess of US dollars ("$") 5.6 billion.

3. Both men are Russian citizens and are, or were, successful businessmen. Mr. Berezovsky fled from Russia to France on 30 October 2000, following a public dispute with Vladimir Putin, who was elected President of the Russian Federation in March 2000. Mr. Berezovsky subsequently settled in England

and applied for asylum in the United Kingdom on 27 October 2001. His application was accepted on 10 September 2003. He is now resident in England.

4. At the time Mr. Berezovsky fled Russia, he had substantial commercial interests in the Russian Federation. According to his United Kingdom tax returns, he remains domiciled in Russia for tax purposes and intends to return to Russia when the political situation permits him to do so.

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

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

The claims

7. Mr. Berezovsky brings two claims against Mr. Abramovich. The first claim, which I shall refer to as the Sibneft claim, relates to an interest which Mr. Berezovsky alleges that he had in Sibneft, a Russian joint stock company, which was created by a decree of the Russian Federation, dated 24 August 1995 as part of a programme of privatisation. Sibneft subsequently became a

major integrated oil company generating large profits. The second claim relates to an interest which Mr. Berezovsky alleges that he had in a company known as RusAl, which became a substantial company in the Russian aluminium industry. I shall refer to that claim as the RusAl claim.

The Sibneft claim

8. Although the formulation of Mr Berezovsky's Sibneft claim changed over time, by the end of the trial, the claim was, in broad summary, as follows:

   i) Mr. Berezovsky and one of his close business associates, known as a Badri Patarkatsishvili, a Georgian citizen, and Mr. Abramovich orally agreed in 1995 to acquire a controlling interest in an oil company, which was to acquire the businesses of various Russian oil companies, including refinery companies and production companies. In the event the oil company which acquired such businesses was Sibneft. I refer to this alleged agreement as the alleged 1995 Agreement.

   ii) The principal terms of the oral agreement were that:

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

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

      c) the share of profits would not be limited to a share of the profits made by Sibneft. but would extend to a similar share in the

profits of Mr Abramovich's trading companies, which were generated as a result of such companies' trading with Sibneft or as a result of Mr Abramovich's acquisition of control of Sibneft;

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

e) Mr Abramovich and his staff would be responsible for the management of Sibneft; and

f) the alleged 1995 Agreement was governed by Russian law.

9. Mr Berezovsky also claimed that a further oral agreement was made between the three men in 1996. I shall refer to this agreement as the alleged 1996 Agreement. The principal terms of this agreement were that:

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

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

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

iv) Mr. Berezovsky and Mr. Patarkatsishvili would continue to be entitled to dividends and to any other payments made by Sibneft to its owners, and to their share of the profits of Mr Abramovich's trading companies on the basis of the percentage split referred to above;

v) thereafter any further acquisitions of Sibneft shares would be held on the same basis; and

vi) the alleged 1996 Agreement was governed by Russian law.

10. Mr Berezovsky claimed that, in the period from 1996 until 2000 very large sums of money were paid by Sibneft, at Mr. Abramovich's direction, to Mr. Berezovsky and Mr. Patarkatsishvili allegedly "in connection with their interests in Sibneft".

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

12. Mr Berezovsky's case then proceeded to allege that, as a result of such intimidatory threats by Mr. Abramovich, Mr. Berezovsky and

Mr. Patarkatsishvili were coerced by him into selling their ownership interests in Sibneft to Mr. Abramovich in May or June 2001 for a price of $1.3 billion, which was a very substantial undervalue, when compared with the true value of their interests in Sibneft. Therefore, claimed Mr. Berezovsky, Mr. Abramovich was obliged to compensate Mr. Berezovsky for the loss which he, Mr. Berezovsky, had suffered as a result of such coerced sale. Mr. Berezovsky claims that his loss is in excess of $5 billion.

The RusAl claim

13. Although the formulation of the RusAl claim changed over time, by the end of the trial, Mr Berezovsky's RusAl claim was, in broad summary, as follows:

    i) Mr. Berezovsky alleged that from about 1998 or 1999, Messrs Berezovsky, Patarkatsishvili and Abramovich began to acquire assets in the Russian aluminium sector. (I refer to these as “the pre-merger aluminium assets”).

    ii) He claimed that a specific oral agreement had been made between the three men in 1999 (a) to apply the "future business" terms of the alleged 1995 Agreement to the pre-merger aluminium assets; and (b) that their respective contributions to the acquisition price of such assets would be paid for from their respective entitlements to their proportionate share of Sibneft’s and Mr Abramovich's trading companies' profits. I shall refer to this agreement as the alleged 1999 Agreement.

iii) Mr Berezovsky went on to allege that, in about late 1999 and early 2000, at Mr. Abramovich's suggestion, he, Mr, Patarkatsishvili and Mr Abramovich entered into merger negotiations with another oligarch, Oleg Deripaska, for the pooling of their aluminium assets and that his, Mr Patarkatsishvili's and Mr Abramovich's contribution to the merger consisted of their interests in the pre-merger aluminium assets.

iv) Mr Berezovsky contended that he, Mr Patarkatsishvili and Mr Abramovich agreed among themselves that any arrangements for the proposed merger would be subject to English law.

v) He further alleged that the terms of the merger deal between himself, Mr Patarkatsishvili and Mr Abramovich on the one hand, and Mr. Deripaska on the other, were finalised at a meeting at the Dorchester Hotel in London on 13 March 2000, attended by all four men. At this meeting, Mr Berezovsky alleged that all participants agreed orally to pool their assets in a new company (in the event, RusAl), and that 50% of the new company would be owned by Mr. Deripaska and his partners (including a Mr. Michael Cherney), and 50% by Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich.

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

14. Mr Berezovsky also contended that, at the Dorchester Hotel meeting, it was orally agreed as between himself, Mr Patarkatsishvili, and Mr Abramovich that, in line with their agreement in relation to the Sibneft shares:

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

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

15. Mr Berezovsky also contended that, during the Dorchester Hotel meeting, Mr. Patarkatsishvili agreed with Messrs Deripaska and Abramovich, in the presence of Mr. Berezovsky, that all the merger arrangements (including those relating solely to Messrs Berezovsky, Patarkatsishvili and Abramovich) would be governed by English law. In the alternative, Mr Berezovsky also asserted that, even if there had not been an express agreement that English law should apply, English law nevertheless applied to the arrangements in relation to RusAl.

16. Mr Berezovsky went on to allege that, in about September 2003, Mr. Abramovich sold a 25% shareholding in RusAl to Mr. Deripaska, without consulting Mr. Berezovsky or Mr. Patarkatsishvili, or obtaining their consent. He alleged that this was a breach of contract and/or trust and/or fiduciary duty on the part of Mr. Abramovich, because it was a breach of the agreement that none of the shareholders would sell without the consent of the other. So Mr Berezovsky claimed that Mr. Abramovich was liable to compensate him for the loss which he has suffered as a result of Mr. Abramovich's breach of

contract and fiduciary duty. Mr. Berezovsky claimed that his loss in relation to RusAl was at least $564 million.

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

17. Mr. Abramovich disputed the Sibneft claim. His case was that, while the precise percentage shareholding fluctuated over time, at all material times, the majority of Sibneft's shares were (indirectly) owned by him through trusts and companies which he controlled; that neither Mr. Berezovsky, nor any entity controlled by him, had ever been the registered or beneficial owner of any significant number of Sibneft shares.

18. He asserted that there never had been any agreement to confer any interest in the company, or in its share capital, or in the profits derived from such interest on Mr. Berezovsky and Mr. Patarkatsishvili; nor had there been any agreement that Mr Berezovsky and Mr Patarkatsishvili should have a share of the profits generated by Mr Abramovich's trading companies, as a result of such companies' trading with Sibneft or as a result of Mr Abramovich's acquisition of control of Sibneft. On the contrary, the deal between Mr Abramovich and Mr Berezovsky was that, in return for substantial cash payments to Mr. Berezovsky, Mr. Abramovich and Sibneft would enjoy Mr. Berezovsky's political patronage and influence, which was indispensible to the construction of any major business in the conditions of the 1990s, the Russian term for such support being "*krysha*" (literally translated "roof"). Mr. Abramovich contended that the amount of the various payments made to Mr. Berezovsky for such support was determined by a combination of unilateral demands by Mr. Berezovsky and *ad hoc* horse-trading between him and Mr. Abramovich,

but did not represent dividend or other payments linked to an ownership interest in Sibneft.

19. Mr. Abramovich denied that any threats were ever made by him directly or indirectly to Mr. Berezovsky to persuade the latter to part with any alleged ownership interest in Sibneft or otherwise. He alleged that the payment of $1.3 billion made by him in 2001 to Mr. Berezovsky and Mr. Patarkatsishvili had nothing to do with any alleged sale of the two men's alleged ownership interests in Sibneft, but, on the contrary, was a final pay-off to discharge Mr. Abramovich’s *krysha* obligations to them in relation to Sibneft. He asserted that, in any event, Mr. Berezovsky had suffered no loss: if he had indeed had some sort of ownership interest in Sibneft, he had never parted with it; if, on the other hand (contrary to Mr. Abramovich’s contentions), the sum of $1.3 billion in fact represented the price paid by Mr. Abramovich to acquire Mr. Berezovsky’s ownership interest in Sibneft, such sum was a great deal more than the value of Mr. Berezovsky’s alleged ownership interest in Sibneft at the time.

20. As a matter of law, he contended, that, in any event, the alleged agreements concluded in 1995 and/or 1996 in relation to Sibneft were not valid as a matter of Russian law. Moreover, even if (contrary to Mr. Abramovich’s contentions) threats had been made to persuade Mr. Berezovsky to sell his alleged ownership interest in Sibneft, any intimidation claim, together with any other claim that might be put forward, was time-barred as a matter of Russian law, which was the relevant law governing the alleged tort of intimidation.

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

21. Mr Abramovich denied Mr Berezovsky's RusAl claim. In broad summary, Mr. Abramovich denied Mr. Berezovsky's claim to an interest in the pre-merger aluminium assets based on the allegation that there was an oral binding agreement in 1995 that each of Mr. Abramovich, Mr. Berezovsky or Mr. Patarkatsishvili should be entitled to participate in the same proportions in any future business venture undertaken by either of the others. He further denied that he had ever agreed in 1999, or at any other time, to participate with Mr. Berezovsky and Mr. Patarkatsishvili in the acquisition of the pre-merger aluminium assets on the same terms as the 1995 Agreement.

22. He denied that there had been any agreement made at the Dorchester Hotel meeting (or elsewhere) that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger of the pre-merger aluminium assets with Mr. Deripaska's aluminium assets; or that there had been any agreement that he, Mr. Abramovich, would hold that interest for Mr. Berezovsky and Mr. Patarkatsishvili under a trust, whether governed by English law or any other law. He further denied that it had been agreed at the Dorchester Hotel meeting between Mr. Berezovsky, Mr. Patarkatsishvili, Mr. Abramovich and Mr. Deripaska that none of them should be entitled to sell his interest in the merged business without the consent of the others; consequently, his sale of a 25% share in RusAl in September 2003 to Mr. Deripaska's holding companies was not in breach of any such agreement.

23. Further he contended that the governing law of any such arrangement would have been Russian law, under which no concept of trust or equitable

proprietary interest was recognised and that, in any event, any arguable claim under Russian law would have been time barred under the relevant Russian law of limitation. He alleged that, in any event, any trust claim would have been bad even under English law, because of the uncertainty of its alleged terms. Finally, he claimed that the RusAl claim had in any event been the subject of a contractual release, which was binding on Mr. Berezovsky. Accordingly, Mr. Abramovich asserted that had no liability to Mr. Berezovsky in respect of the RusAl claim.

The claims made in the Chancery actions

24. In addition to his claim in the Commercial court proceedings against Mr. Abramovich, in late 2008 and early 2009 Mr. Berezovsky also issued three actions in the Chancery Division ("the Chancery actions"). In these actions, Mr. Berezovsky contends that he was Mr. Patarkatsishvili's partner in relation to a number of substantial business ventures, and seeks to obtain what Mr. Berezovsky alleges is his (i.e. Mr. Berezovsky's) share of these ventures, including an interest in RusAl. The defendants to the Chancery actions include members of Mr Patarkatsishvili's family and his personal representatives ("the Family defendants"); Vasily Anisimov ("Mr. Anisimov"), a Russian businessman, together with a number of entities controlled by him ("the Anisimov defendants"); and various companies referred to as "the Salford defendants", who were, or were alleged to be, members or associates of, a group of companies including Salford Capital Partners Inc, a private equity firm specialising in the developing markets of the former Soviet Union and

Eastern Europe, alleged to have been involved in the sale of a second tranche of RusAl shares.

25. The Family defendants, Mr. Anisimov and the Salford defendants are participating in this Joint Trial pursuant to an order of Mann J and myself dated 16 August 2010 made at a conjoined Case Management Conference held in both the Commercial court action and in the Chancery actions. , That order identified a number of issues, defined as “the Overlap Issues”, which arise in both the Commercial court action and the Chancery actions. Mann J and I directed that the overlap issues should be tried and determined as preliminary issues in the Chancery actions at the same time as the trial of the Commercial court action. We further ordered that each of the parties to the Chancery actions should be bound only by the findings made at the Joint Trial on, and might participate fully in, the Overlap Issues, but should not be bound by findings at the Joint Trial on any other issues.

Significant features of the case

26. There were a number of significant features of the case which the court had to bear in mind when approaching the evidence. For the purposes of this summary I identify a few of the more important ones.

27. First, at the core of the dispute between the parties were four highly contentious alleged oral agreements, relating to substantial assets which, if established, had serious financial and commercial consequences for the alleged parties to those agreements. Every, or almost every, aspect of the alleged agreements was in dispute. Significantly there were no contemporaneous notes, memoranda or other documents recording the making

of these alleged agreements or referring to their terms. Such documents as were relied upon by Mr. Berezovsky as circumstantial evidence supporting his case, were usually (but not invariably) considerably later in origin than the alleged agreements; not documents that were communicated to Mr. Abramovich or his representatives; and were documents which were open to various interpretations as to whether they were supportive of his case.

28. Second, the oral evidence relating to such claims was extremely stale. The court was being asked, in effect, to make findings based on limited direct evidence relating to events which occurred many years ago. In a case which is dependent upon establishing oral agreements, evidence relating to events which occurred a long time ago necessarily gives rise to particular problems. Apart from the fact that, not surprisingly, it is often difficult for witnesses to remember what happened many years ago, and they can rarely be expected to remember the specific words which they used, witnesses can easily persuade themselves that their recollection of what happened is the correct one.

29. Third, that problem was compounded in this case by the fact there had been substantial summary judgment proceedings, followed by the appeal to the Court of Appeal, during the course of which round after round of evidence was produced by various witnesses on each side. Given the substantial resources of the parties, and the serious allegations of dishonesty, the case was heavily lawyered on both sides. That meant that no evidential stone was left unturned, unaddressed or unpolished. Those features, not surprisingly, resulted in shifts or changes in the parties' evidence or cases, as the lawyers microscopically examined each aspect of the evidence and acquired a greater

in-depth understanding of the facts. It also led to some scepticism on the court's part as to whether the lengthy witness statements reflected more the industrious work product of the lawyers, than the actual evidence of the witnesses.

30. Fourth, the lapse of time and staleness of the claims also gave rise to the inevitable problem that the court did not have before it all the evidence which it might otherwise have done, had the dispute been resolved nearer the time that the alleged oral agreements had been made, rather than 16 years after they were alleged to have been concluded.

31. Fifth, the burden of proof was on Mr. Berezovsky to establish his claims. As the only witness, on his side, who could give direct oral evidence of the making of the alleged agreements or the alleged threats, the evidential burden on him was substantial. Ultimately, it was for Mr. Berezovsky to convince the court, on the balance of probabilities, that the alleged oral agreements and threats had indeed been made, not for Mr. Abramovich to convince the court otherwise.

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

Mr. Berezovsky

33. Because both the Sibneft and the RusAl claims depended so very heavily on the oral evidence of Mr. Berezovsky, the court needed to have a high degree of confidence in the quality of his evidence. That meant confidence not only in his ability to recollect things accurately, but also in his objectivity and truthfulness as a witness.

34. On my analysis of the entirety of the evidence, I found Mr. Berezovsky an unimpressive, and inherently unreliable, witness, who regarded truth as a transitory, flexible concept, which could be moulded to suit his current purposes. At times the evidence which he gave was deliberately dishonest; sometimes he was clearly making his evidence up as he went along in response to the perceived difficulty in answering the questions in a manner consistent with his case; at other times, I gained the impression that he was not necessarily being deliberately dishonest, but had deluded himself into believing his own version of events. On occasions he tried to avoid answering questions by making long and irrelevant speeches, or by professing to have forgotten facts which he had been happy to record in his pleadings or witness statements. He embroidered and supplemented statements in his witness statements, or directly contradicted them. He departed from his own previous oral evidence, sometimes within minutes of having given it. When the evidence presented problems, Mr. Berezovsky simply changed his case so as to dovetail it in with the new facts, as best he could. He repeatedly sought to distance himself from statements in pleadings and in witness statements which he had signed or approved, blaming the "interpretation" of his lawyers, as if

this somehow diminished his personal responsibility for accounts of the facts, which must have been derived from him and which he had verified as his own.

35. Whilst I can readily understand that, in a case of this sort, which involved a considerable amount of evidence at the interlocutory stage given by lawyers on instructions, it is not surprising that the principal witness ultimately describes aspects of the case in significantly different terms, that could not excuse the extent of Mr. Berezovsky's deviations from his previous case as presented in his pleadings and witness statements. His "I blame my lawyers" excuse was not convincing.

36. A particular example of his lack credibility as a witness was his initial denial in cross-examination that any of his witnesses stood to gain financially, if he were to be successful in the Commercial Court action. In fact that was untrue. Two of Mr Berezovsky's witnesses, Dr. Nosova and her husband, Mr. Lindley, a solicitor, stood to gain very substantially if Mr. Berezovsky were to win these proceedings. Mr. Berezovsky's excuse in re-examination, when he revealed the contingency fee arrangements for the first time, for not having given a truthful answer in cross-examination, was unconvincing. In fact it appeared that, despite specific enquiries having been made earlier in the proceedings by Mr Abramovich's solicitors, these contingency agreements had previously been concealed from them, and indeed even from Mr Berezovsky's own solicitors

37. Accordingly, I concluded that, in the absence of corroboration, Mr. Berezovsky's evidence frequently could not be relied upon, where it differed from that of Mr. Abramovich, or other witnesses. I regret to say that

the bottom line of my analysis of Mr. Berezovsky's credibility is that he would have said almost anything to support his case.

Mr Abramovich

38. There was a marked contrast between the manner in which Mr. Berezovsky gave his evidence and that in which Mr. Abramovich did so. Mr. Abramovich gave careful and thoughtful answers, which were focused on the specific issues about which he was being questioned. At all times, he was concerned to ensure that he understood the precise question, and the precise premise underlying, the question which he was being asked. He was meticulous in making sure that, despite the difficulties of the translation process, he understood the sense of the questions which was being put to him. To a certain extent that difference, no doubt, reflected the different personalities of the two men, for which I gave every allowance possible to Mr. Berezovsky. But it also reflected Mr. Abramovich's responsible approach to giving answers which he could honestly support.

39. Where he had relevant knowledge, he was able to give full and detailed answers; he took care to distinguish between his own knowledge, reconstructed assumptions and speculation. He was not afraid to give answers which a less scrupulous witness would have considered unhelpful to his case. There were few differences between Mr. Abramovich's oral evidence and what he had said in his witness statements. Such differences as there were, were largely attributable to the legitimate addition of corroborative detail in response to questions in cross-examination, and to difficulties inherent in the translation process. I found Mr. Abramovich to be frank in making

concessions where they were due, for example in relation the backdating of documents.

40. Whilst, not surprisingly, there were occasions where his evidence was inconsistent, or his recollection was faulty, or had changed over time, none of these occurrences was so startling as to give me concerns about his basic truthfulness and reliability as a witness.

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

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

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

Summary of the court's conclusions

44. I set out below a summary of my conclusions in relation to the principal liability issues in contention between the parties. It was agreed between the parties that, because of the unavoidable unavailability of one of the quantum experts, issues relating to the quantum of Mr. Berezovsky's claim in the Commercial court action should be adjourned pending my determination of the liability issues.

45. The detailed reasons for reaching these conclusions are set out in my full judgment.

The Agreed List of Issues

46. Pursuant to an order of the court the parties agreed a lengthy list of issues to be determined in the Commercial court action ("the Agreed List of Issues"). They will be attached to my full judgment as Appendix 1. I have re-formulated the relevant liability issues in a shorter format for the purposes of this judgment.

A Sibneft

Issue A1:

47. **Issue A1:** Were agreements made, in 1995 and in 1996 between Mr. Abramovich on the one hand, and Mr. Berezovsky and Mr. Patarkatsishvili on the other, that they would have an interest in the proportions 50:50 in any shares that they might acquire in any oil company (in the event Sibneft), carrying on the business formerly carried on by two

Russian oil companies, and additionally, in the terms alleged by Mr. Berezovsky in his pleadings and in his written and oral evidence?

Executive summary of my conclusion on Issue A1 -the alleged 1995 and 1996 Agreements

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

49. Thus I find that:

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

ii) there was no agreement that he or they would be rewarded by an entitlement to receive payment of 50% (or some other proportionate entitlement) of Sibneft profits and/or those generated by Mr. Abramovich's trading companies as a result of his acquisition of control of, or involvement with, Sibneft, to be held jointly with Mr. Patarkatsishvili. On the contrary, the evidence established that the arrangement between the parties was that Mr. Abramovich would provide payments towards Mr. Berezovsky's (and subsequently

Mr. Patarkatsishvili's) expenses, not only in connection with ORT, but also generally, in exchange for Mr. Berezovsky's assistance, protection or *krysha,* and subsequently that of Mr. Patarkatsishvili's. The actual amounts to be paid were agreed each year as between Mr. Abramovich and Mr. Patarkatsishvili as a result of a process of negotiation.

50. Whilst it may have been the case that:

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

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

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

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

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

53. I found Mr. Berezovsky's evidence (and that of his witnesses) in relation to this issue to be vague, internally inconsistent, exaggerated and, at times, incredible. Whilst there were defects in certain aspects of Mr. Abramovich's

evidence (and that of his witnesses), I found it, on the whole, to be more reliable and easier to square with the inherent probabilities of the business relationship between the two men and the circumstantial evidence.

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

Issue A2:

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

Executive summary of my conclusions in relation to Issue A2- the validity of the alleged 1995 Agreement

56. On the assumption that that the alleged 1995 Agreement was made in the terms alleged by Mr. Berezovsky, I conclude that it was invalid or ineffective under Russian law, because, amongst other reasons, its terms were not defined with sufficient certainty to be effective as a concluded contract and there was no intention to create legal relations, the intention being that it should be binding in honour only.

Issue A3:

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

Executive summary of my conclusion in relation to the Sibneft intimidation issue – A3

58. I first address Mr Berezovsky's claim that threats were made, prior to the threats in relation to Sibneft, to coerce Mr Berezovsky and Mr Patarkatsishvili to dispose of their shares in ORT. I hold that Mr. Berezovsky has not established, on the balance of probabilities, either:

    i) that a threat was made to him personally by President Putin and/or by Mr. Voloshin at two meetings at the Kremlin in August 2000 that, unless Mr. Berezovsky surrendered his shares in ORT to the Russian state (or to an entity acceptable to it), Mr. Berezovsky would be imprisoned in the same way as Mr. Gusinsky had been; or

    ii) that there was a meeting between Mr. Abramovich and Mr. Berezovsky at Cap d'Antibes on 7, 8 or 9 December 2000, at which Mr. Abramovich told Mr. Berezovsky that "he had come on the orders of President Putin and Mr. Voloshin"; that Mr. Berezovsky and Mr. Patarkatsishvili had to sell their interests in ORT immediately; that if they did so, Mr. Glushkov would be released from prison; and that, if they refused to do so, Mr. Glushkov "… would remain in prison for a very long time" and "President Putin would seize their ORT interests"; or

    iii) that Mr. Berezovsky only decided to sell his stake in ORT because of threats made by Mr. Abramovich.

59. I accept Mr. Voloshin's evidence that no such threats were made, either by him or President Putin. I likewise accept Mr. Abramovich's evidence that no such threats were made by him.

Executive summary of my conclusions in relation to the Sibneft intimidation issue

60. My conclusion in relation to the Sibneft intimidation issue is that Mr. Abramovich did not make either express or implied threats to Mr. Berezovsky and Mr. Patarkatsishvili, with the intention of intimidating them to dispose of their alleged interests in Sibneft. In particular, Mr. Abramovich did not threaten, in the course of meetings in Moscow with Mr. Patarkatsishvili from about August 2000 to May 2001, that he would use his influence with the Putin regime to seek to cause Mr. Berezovsky's and Mr. Patarkatsishvili's interests in Sibneft to be expropriated unless they sold their interests to him; nor, in the course of meetings at Munich and Cologne airport in May 2001, did Mr. Abramovich threaten that he would use his influence within the Putin regime to seek to ensure that Mr. Glushkov would not be released from prison. I also concluded that the sum of $1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili did not represent the sale price of Mr. Berezovsky's and Mr. Patarkatsishvili's alleged Sibneft interest, but rather was a final lump sum payment in order to discharge what Mr. Abramovich's regarded as his *krysha* obligations.

61. In the circumstances, and given my conclusion that Mr. Berezovsky had no such interest, the issue articulated in paragraph 8 of the Agreed List of Issues (i.e. whether the threats made coerced Mr. Berezovsky into disposing of his alleged Sibneft interest) does not arise for determination.

Issue A4:

62. **Issue A4:** If Mr. Berezovsky had an interest in Sibneft, did he sell it to Devonia Investments Limited under a sale and purchase agreement ("the Devonia Agreement") dated 11/12 June 2001 between Mr. Berezovsky and Mr. Patarkatsishvili, Devonia Investments Limited ("Devonia") and Sheikh Sultan Crown Prince of Abu Dhabi, Sheikh Sultan Bin Khalifa Al Nahyan. ("the Sheikh")?"

Executive summary of my conclusions in relation to the Devonia Agreement – Issue A4

63. My conclusions in relation to this issue may be stated as follows. First, the Devonia Agreement was not a genuine agreement. It was a sham agreement, entered into for the purposes of generating documentation that would give a false impression that a genuine commercial transaction had been entered into, so as to satisfy the money-laundering requirements of the UK bank, into accounts at which the $1.3 million paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili was, ultimately, going to be paid. Second, Mr. Abramovich was not involved in, or party to, the Devonia Agreement and was not aware of its terms: such limited involvement as there was, at a low level, by members of his accounting staff in what might loosely be referred to as the Devonia Agreement transaction was directed at, and limited to, the mechanics for the payment by an Abramovich controlled company of the $1.3 billion to Devonia's account. Third, contrary to the terms of the Devonia Agreement, there was never any genuine intention that Devonia would "transfer the beneficial interests in the Shares being [purportedly] purchased" under the agreement to Mr. Abramovich or

companies or entities controlled by, or associated with, him. Fourth, Devonia never did transfer such interests to Mr. Abramovich or any companies associated with him. Fifth, because it was a sham transaction, the Devonia Agreement did not support Mr. Berezovsky's case in relation to the alleged 1995 and 1996 Agreements or in relation to the Sibneft intimidation issue. Sixth, on the contrary, the evidence relating to the issue, and the fact that Mr. Berezovsky chose to assert that the Devonia Agreement was a genuine agreement, did not reflect well on Mr. Berezovsky's credibility.

Issues A5, A6 and A7

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

Issue A6: Has such liability arisen under that law?

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

Executive summary and conclusion on Issues A5, A6 and A7

65. In the light of my earlier findings, it is not necessary for me to decide Issue A5, namely what is the proper law governing Mr. Berezovsky's alleged claim of intimidation, since whichever is the applicable law, he has not made out his claim on the facts. Accordingly I do not do so. But my provisional view is that the governing law of the intimidation claim would have been Russian law.

66. Irrespective of whether the proper law governing the claim is Russian, French or Russian law, my conclusion on Issue A6, based on my factual findings that there was no intimidation, is necessarily that no liability in tort or delict has

arisen under the relevant law. In the circumstances, there is no need for me to decide the detailed issues of Russian substantive and procedural law as to whether Mr. Abramovich's conduct fulfilled the conditions of liability under article 1064 of the Russian Civil Code and accordingly I do not do so.

67. In the circumstances Issue A7 does not arise for determination. Therefore it is not necessary or appropriate for me to decide, on a hypothetical basis, whether, if Mr. Berezovsky had a claim, it would be time-barred under Russian or English law. Accordingly I do not determine Issue 7.

B RusAl

Issue B1:

68. Was an agreement made between Mr. Abramovich and Mr. Berezovsky(i) in 1995, or (ii) in late 1999, the effect of which was that Mr. Berezovsky would have an interest in any aluminium producers which might be acquired by Mr. Abramovich or his companies (referred to above as the pre-merger aluminium assets)?

Executive summary in relation to Issue B1

69. I conclude that no agreement was made between Mr. Abramovich and Mr. Berezovsky either in 1995 or in late 1999, the effect of which was that Mr. Berezovsky would have an interest in any pre-merger aluminium assets (in the event the Bratsk and KrAZ assets). Mr. Berezovsky did not have, or acquire, any interest in any in any pre-merger aluminium assets prior to the meeting at the Dorchester Hotel in March 2000 (other than as a result of any bilateral joint venture which may have existed between Mr. Berezovsky and

Mr. Patarkatsishvili, as to which I make no finding.) There was no agreement that any interest in the pre-merger aluminium assets should be paid for out of Mr. Berezovsky's entitlement to Sibneft or Sibneft related profits, and no contribution was in fact made by Mr. Berezovsky to the cost of the acquisition. I accept Mr. Abramovich's evidence that he alone purchased the aluminium assets (through companies owned or controlled by him) pursuant to the terms of an agreement purportedly dated 10 February, 2000 ("the Master Agreement") and specifically pursuant to ten individual sale and purchase contracts also purportedly dated 10 February, 2000. I conclude that the other two individuals named in the Master Agreement as purchasers, namely Mr. Patarkatsishvili and Mr. Shvidler, assisted him to close the transaction but did not thereby acquire any interest in such assets. I accept Mr. Abramovich's case that Mr. Patarkatsishvili's role in the transaction was as intermediary and facilitator, and for those services Mr. Abramovich agreed to pay him a fee, not only for his services as an intermediary, but also for providing *krysha* in a difficult environment, where his association with the purchase of the aluminium assets was essential. I conclude that neither Mr. Berezovsky nor Mr. Patarkatsishvili had any interest in any of the companies which acquired the pre-merger aluminium assets.

Issue B2:

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

Executive summary in relation to Issue B2

71. No agreement was made at the Dorchester Hotel meeting on 13 March 2000 that Mr. Berezovsky and Mr. Patarkatsishvili would have a share of the aluminium business created by the merger of the pre-merger aluminium assets with Mr. Deripaska's aluminium interests. There was no agreement made at that meeting to the effect that Mr. Berezovsky, Mr. Patarkatsishvili and Mr. Abramovich would pool the pre-merger aluminium assets acquired in February 2000 with Mr. Deripaska's aluminium interests; Mr. Berezovsky and Mr. Patarkatsishvili had no interest in the pre-merger aluminium assets and Mr. Abramovich and Mr. Deripaska had already agreed to pool such assets as between themselves. In particular, no agreement made at that meeting by Mr. Abramovich, or by Mr. Abramovich and Mr. Deripaska, with Mr. Berezovsky and Mr. Patarkatsishvili:

    i) that Mr. Abramovich would hold 50% of his interest in the merged business on trust for Mr. Berezovsky and Mr. Patarkatsishvili;

    ii) that none of Mr. Abramovich, Mr. Deripaska, Mr. Berezovsky and Mr. Patarkatsishvili would sell his interest in RusAl without the prior agreement of the others; or

    iii) that Mr. Abramovich would assume fiduciary obligations in relation to Mr. Berezovsky and Mr. Patarkatsishvili.

72. The evidence relating to this issue supports my conclusion that the relationship between Mr. Berezovsky and Mr. Abramovich was based upon a protection,

or *krysha*, type relationship and not on any contractually binding agreement between the two men.

Issue B3:

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

Executive summary and conclusion in relation to Issue B3

74. The issue as to whether there was any express agreement that Mr. Berezovsky and Mr. Patarkatsishvili's interest in the aluminium assets should be held on an English law trust for Mr. Abramovich did not arise, in the light of my previous determination that Mr. Berezovsky had no such interest. In any event, the evidence did not support any agreement that Mr. Abramovich would hold any such interest on trust for Mr. Berezovsky and Mr. Patarkatsishvili whether under English law or otherwise.

Issue B4:

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

Executive summary and conclusion in relation to Issue B.4.

76. The issue as to whether there was an implied choice of English law, or whether English law the system of law with which the alleged trust and/or fiduciary duties and/or the contract were most closely connected, simply did not arise for consideration, in the light of my previous determination that Mr. Berezovsky had no such interest. It would be inappropriate to decide such an issue on a wholly hypothetical basis.

Issue B5:

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

Executive summary and conclusion in relation to Issue B5

78. The issue as to whether the alleged express RusAl trust would be good even in English law, simply did not arise for consideration, in the light of my previous determination that Mr. Berezovsky had no such interest. It would be inappropriate to decide such an issue on a wholly hypothetical basis.

Issue B6:

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

Executive summary and conclusion in relation to Issue B6

80. In the light of my finding in relation to Issue B1, namely that Mr. Berezovsky did not have any proprietary, legally enforceable interest in the pre-merger

aluminium assets (that arose other than through his alleged bilateral joint venture or other arrangements with Mr. Patarkatsishvili), it follows that Mr. Berezovsky did not acquire any interest under a resulting or constructive trust governed by English law in relation to shares in RusAl.

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

Executive summary and conclusion in relation to Issue B7

82. No such agreement to the effect that none of Mr. Deripaska, Mr. Abramovich Mr. Berezovsky or Mr. Patarkatsishvili would be entitled to sell his interest in the merged business without the consent of the others, was concluded at the Dorchester Hotel meeting.

83. The merger terms were not in fact negotiated at the Dorchester Hotel meeting. It is inconceivable that, if such a term had been agreed as part of the merger terms with Mr. Deripaska, it would not have been embodied in a written agreement like the rest of the merger terms. Moreover, the suggested term, in its simplistic formulation, made no commercial sense.

Issue B8

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

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

Executive summary and conclusion in relation to Issues B8 and B9

86. In the light of my conclusion that there was no such agreement restricting the sale of Mr. Abramovich's or Mr. Deripaska's RusAl shares without the consent of each of those two men and Mr. Berezovsky and Mr. Patarkatsishvili, Issue B8, namely what was the proper law of such agreement, does not arise for consideration.

87. It likewise follows that, when Mr. Abramovich sold the first 25% tranche of RusAl shares to Mr. Deripaska in September 2003 the sale did not amount to any breach of trust and/or fiduciary duty and/or contract on the part of Mr. Abramovich.

Issue B10:

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

Executive summary and conclusions in relation to Issue B10

89. In the light of my conclusions in relations to Issues B1 and B2, Issue B10 is, for all practical purposes, academic, since I have decided that Mr. Berezovsky did not have any entitlement to make any claims, or potential claims, against Mr. Abramovich, or Madison, in relation to RusAl. In other words, the question whether such claims as Mr. Berezovsky has brought against Mr. Abramovich (which I have held to be unfounded), were in fact released by the Deed of Settlement as between Madison and Cliren is moot. It was not suggested, for example, that the court's determination on this issue is required to prevent any further or future claim by Mr. Berezovsky against

Mr. Abramovich in relation to RusAl. Unless I am persuaded that there is a specific and necessary reason for my decision on this issue, I am reluctant to decide it. There would appear to be no utility in my doing so.

90. It is clear from the decision in *BCCI v Ali* [2002] 1 AC 251 at paragraph 8, that there are no special rules of interpretation applicable to the release: it is to be construed in the same way as every other contract, the question being the intention of the parties ascertained objectively in the context of the circumstances in which the release was entered into. Whether a particular claim or potential claim is caught by the express terms of the particular release can therefore be heavily dependent on the factual matrix, as the decision in *Ali* itself demonstrates. A slight change in the facts as I have found them to be (for example, if it had been the case that Mr. Abramovich believed that Mr. Berezovsky had a genuine claim to an interest in RusAl and knew that he was not prepared to sign the release) might have produced a different conclusion in relation to the issue raised. I would not therefore be prepared to decide the issue on a hypothetical basis, for example that Mr. Berezovsky's claim to an interest in RusAl was well-founded, without an agreed factual basis for the hypothesis upon which I was decide the issue.

91. If any party persuades me that there is a genuine need for me to decide this issue I will do so.

Disposition

92. It follows that I dismiss Mr. Berezovsky's claims both in relation to Sibneft and in relation to RusAl in their entirety. I direct that any consequential matters arising out of this judgment should be addressed on a subsequent

occasion, when counsel have had an opportunity to consider this judgment and supply me with a draft form of order reflecting my findings.

93. It is appropriate that I should pay tribute to the highly professional and efficient way in which this case was conducted, in the best Commercial Court traditions, not only by the respective teams of counsel and solicitors, but also by the respective participants and their service providers. Of course, the judge sees only the public panoply of the courtroom, but, whatever tensions or undercurrents there may have been between the parties, or indeed the lawyers, in what were, heavily fought, acrimonious disputes involving serious allegations of dishonesty and blackmail, the case was battled out in a courteous, disciplined and restrained manner. That necessarily contributed to an efficient and effective trial process.

94. There were also a number of other features which significantly contributed to the smooth running of the trial. Perhaps most importantly, the extensive documentation was presented in a highly organised and easily accessible electronic format, with the result that, apart from reliance, to a limited extent, on hardcopy versions of the written arguments, and the expert statements, I was able to conduct what, at least so far as I was concerned, was a paperless trial. There can be no doubt that this enabled the trial to be concluded within the allotted timetable, and with the maximum efficiency. I am extremely grateful, as, I am sure, are the other lawyers in the case, for all the technical assistance which I and they received in this respect.

95. Another significant contributor to the trial process was the skill, efficiency and understanding cooperation of the simultaneous translators. Their industry

enabled evidence given in Russian to be delivered, and understood, in English in a virtually seamless fashion. Absent their contribution, I have no doubt that the trial would have taken considerably longer.

96. I must also express my gratitude to those who were responsible for the quality and detail of the extensive written submissions, without which my task would have been immeasurably harder. They have been an invaluable aid to the completion of my full judgment.