

In the matter of an arbitration under the Rules of Arbitration
of the Arbitration Institute of the Stockholm Chamber of
Commerce

No: V (116/2010)

ICC Hearing Centre 112, avenue Kleber
75016, Paris

Day 3

Wednesday, 3rd October 2012

Hearing on Jurisdiction and the Merits

Before:

PROFESSOR KARL-HEINZ BOCKSTIEGEL PROFESSOR SERGEI LEBEDEV MR DAVID
R HAIGH QC

BETWEEN:

ANATOLIE STATI GABRIEL STATI
ASCOM GROUP SA TERRA RAF TRANS TRADING LIMITED
Claimants

-v-

THE REPUBLIC OF KAZAKHSTAN
Respondent

REGINALD SMITH, KENNETH FLEURIET, KEVIN MOHR, HELOiSE HERVE, AMY
ROEBUCK FREY, ALEXANDRA KOTLYACHKOVA and VALERYA SUBOCHEVA, of King
& Spalding, appeared on behalf of the Claimants.

DR PATRICIA NACIMIENTO, JOSEPH TIRADO, SIMON RAMSDEN, ZHANIBEK
SAURBEK, MAX STEIN and SVEN LANGE, of Norton Rose LLP, and PROFESSOR
IGOR V ZENKIN, of Moscow Regional Collegium of Advocates, appeared
on behalf of the Respondent.

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KATHERINE SIMPSON, Secretary to the Tribunal

INTERPRETERS

ALEXANDRE TCHEKHOV, Russian-English Interpreter

NATALY HOLM, Russian-English Interpreter

<p>09:30 1 Wednesday, 3rd October 2012</p> <p>2 (9.32 am)</p> <p>3 THE CHAIRMAN: Good morning, everybody. We will continue</p> <p>4 with the testimony of Mr Condorachi. While I was in the</p> <p>5 room earlier, I suggested to our colleague that perhaps</p> <p>6 we could ask the interpreters to make a Russian</p> <p>7 translation of our witness declaration, and somebody</p> <p>8 could print it out and we will put it on the table.</p> <p>9 That will make things easier for future witnesses,</p> <p>10 rather than going back and forth with that.</p> <p>11 THE INTERPRETER: No problem, sir.</p> <p>12 MS ROEBUCK FREY: Just to clarify, since the interpreters</p> <p>13 will be busy during this session --</p> <p>14 THE CHAIRMAN: No, there's no rush, obviously.</p> <p>15 MS ROEBUCK FREY: Well, we've asked someone on our team to</p> <p>16 do the translation, so it should be ready for the next</p> <p>17 witness.</p> <p>18 THE CHAIRMAN: It shouldn't be that difficult, I know.</p> <p>19 Alright. We continue with the cross-examination.</p> <p>20 Mr Tirado -- while you are still here! I have seen</p> <p>21 the news this morning.</p> <p>22 MR TIRADO: I'm not going anywhere else, sir. I'm here to</p> <p>23 the end. Good morning, sir.</p> <p>24 (9.33 am)</p> <p>25</p> <p style="text-align: center;">Page 1</p>	<p>09:36 1 Exhibit R-24, which you have. Yesterday you said that</p> <p>2 the letter C-115 reproduced from the law without quoting</p> <p>3 the last sentence about underground storages.</p> <p>4 A. That's right.</p> <p>5 Q. Could I ask you, looking at Exhibit R-24, is your</p> <p>6 response the same today?</p> <p>7 MS ROEBUCK FREY: Excuse me, Mr Tirado, can you please let</p> <p>8 me know what part of R-24 you are referring to?</p> <p>9 MR TIRADO: Yes. Unfortunately it doesn't have page</p> <p>10 numbering. It's the seventh page in.</p> <p>11 MR HAIGH: Sorry to interrupt you further, Mr Tirado, but</p> <p>12 I don't have the hard copy of R-24; it's not in the</p> <p>13 hearing binder. So could you just give me a little help</p> <p>14 on what it is you are referring to?</p> <p>15 THE CHAIRMAN: It is also not on the USB.</p> <p>16 MS ROEBUCK FREY: Are you looking at the English version or</p> <p>17 the Russian version?</p> <p>18 MR TIRADO: The English version. It's Article 12, headed</p> <p>19 "Licensing of Activities in the Sphere of Industry".</p> <p>20 THE INTERPRETER: The interpreters are missing this document</p> <p>21 as well, sir.</p> <p>22 MR TIRADO: Apologies for that. The reason it's not in the</p> <p>23 hearing bundle, of course, is that we were relying on</p> <p>24 the exhibit yesterday that was provided by the</p> <p>25 claimants. This is a document that we've had to provide</p> <p style="text-align: center;">Page 3</p>
<p>09:32 1 MR ALEXANDRU CONDORACHI (continued)</p> <p>2 (Evidence interpreted)</p> <p>3 Cross-examination by MR TIRADO (continued)</p> <p>4 Q. Good morning, Mr Condorachi. Yesterday, near the end of</p> <p>5 the afternoon, we were discussing the so-called</p> <p>6 "admission letter" from Mr Cornegruta to the Agency for</p> <p>7 the Regulation of Natural Monopolies, which is exhibited</p> <p>8 by the claimants at Exhibit C-115. I would like to</p> <p>9 return to that topic briefly.</p> <p>10 So if you could have available -- which is being</p> <p>11 passed up to you now -- copies of Exhibit C-115, also</p> <p>12 Exhibit C-116, and a third exhibit I am going to take</p> <p>13 you to is R-24. It would be helpful to have them all in</p> <p>14 front of you.</p> <p>15 Yesterday I asked you some questions on</p> <p>16 Exhibit C-116. This document was submitted by the</p> <p>17 claimants with the statement of claim in support of the</p> <p>18 claimants' statement that there was a new law on</p> <p>19 licensing. You asked us to show you a version of the</p> <p>20 law from the relevant time. Exhibit C-115 is dated</p> <p>21 13th August 2008. The relevant law is the Law on</p> <p>22 Licensing 2007.</p> <p>23 A. No, 13th August and 13th June is the date.</p> <p>24 13th June 2008 is the correct date of C-115.</p> <p>25 Q. Well, the Republic submitted this document as</p> <p style="text-align: center;">Page 2</p>	<p>09:38 1 overnight.</p> <p>2 Sorry, if you've found Article 12, "Licensing of</p> <p>3 Activities in the Sphere of Industry, subsection 2, just</p> <p>4 before the start of subsection 3.</p> <p>5 MS ROEBUCK FREY: I'm sorry to keep interrupting you, but</p> <p>6 I just noticed that just above in the English version --</p> <p>7 and it appears in the Russian version as well -- just</p> <p>8 above the reference to Article 12 it states that this is</p> <p>9 the law as of 2011.</p> <p>10 MR TIRADO: Forgive me, there still seems to be some</p> <p>11 confusion on these exhibits. Let's skip that for now</p> <p>12 and we can come back.</p> <p>13 Can we then pass on, please, to the next topic,</p> <p>14 which is tax and inspections. There was extensive</p> <p>15 litigation relating to the corporate back-taxes, wasn't</p> <p>16 there?</p> <p>17 A. That's right. There was an additional corporate tax,</p> <p>18 back-tax, which accrued as a result of inspections in</p> <p>19 November, and the results or the conclusions to which</p> <p>20 the tax committee had come were challenged by us in</p> <p>21 several instances in court.</p> <p>22 Q. But as Mr Rahimgaliev confirms at paragraphs 8.5 and 8.6</p> <p>23 of his statement --</p> <p>24 THE INTERPRETER: Sir, could you please refer to the</p> <p>25 particular exhibit for the interpreter's reference?</p> <p style="text-align: center;">Page 4</p>

09:41 1 MR TIRADO: It's the witness statement of Mr Rahimgaliev.

2 THE INTERPRETER: Thank you, sir.

3 MR TIRADO: Paragraphs 8.5 and 8.6, where he confirms that

4 the Kazakh courts, including the Supreme Court, upheld

5 the tax committee's assessment of corporate back-taxes

6 against KPM and TNG, didn't they?

7 A. Well, it's important to make the following note

8 regarding the witness statement, based on what I have

9 just read. Mr Rahimgaliev refers to only one judgment

10 of the first-instance court, and intentionally does not

11 demonstrate that the litigation actually was much longer

12 and resulted in a whole number of judgments. He only

13 names one particular court judgment you see here, and

14 the decision from 3rd November 2010.

15 When it comes to this litigation, the first

16 statement of claim was denied, and then it was appealed

17 in Astana city, and as a result of the appeal the court

18 cancelled the initial judgment and referred the case

19 back to the first instance. The first-instance court

20 made a new judgment against KPM, and one more appeal

21 resulted in Astana court judgment saying that the

22 notices of the tax committee ...

23 THE INTERPRETER: Sorry, sir, I had to ask the witness to

24 speak a little bit slower.

25 A. So the notices of the tax committee were found by Astana

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09:43 1 court as void, and the way that the taxes were

2 calculated were considered invalid.

3 The tax committee challenged this decision in

4 cassation way, and at the moment of expropriation the

5 decision entered into force; and as you see, only after

6 expropriation this decision was challenged again. So at

7 the moment of expropriation there was no valid

8 back-taxes, and all the instances, including cassation

9 instances, supported the position of KPM.

10 And why Mr --

11 MR TIRADO: Mr Condorachi, I'm sorry to interrupt you, but,

12 Mr Chairman, my question was very specific.

13 THE CHAIRMAN: Well, I'm sorry, I think in that context, as

14 you raised the question, he should be able to finish the

15 explanation. Please go ahead.

16 A. I just wanted to clarify that I have no explanation why

17 Mr Rahimgaliev in his statement only refers to one

18 single judgment in favour of Kazakhstan, and the very

19 final judgment which was granted after expropriation,

20 without referring to the entire history of judgments in

21 favour of KPM, the judgments which actually entered into

22 force, and only after expropriation the latest judgment

23 was rendered. But clearly after expropriation there

24 were reasons why the final judgment was different from

25 the previous ones.

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09:45 1 MR TIRADO: Okay. But it was KPMs and TNG's decision to

2 challenge the tax assessments, wasn't it?

3 A. They not only decided to challenge but they actually did

4 challenge, and they challenged these decisions in the

5 entire hierarchy of the courts of Kazakhstan until the

6 very last moment when these decisions entered into

7 force. To the best of our knowledge, we were successful

8 in our challenge. But in the supervisory manner after

9 expropriation another latest decision was rendered, and

10 this was without us even knowing about the supervisory

11 decision, and this decision was rendered four months

12 after expropriation.

13 Q. The position is that KPM and TNG did not pay the

14 corporate back-taxes, did they?

15 A. That's correct, since until the final court decision

16 comes into force, there is no duty on the companies to

17 pay these if they are being challenged. And this is why

18 these taxes were not paid: because the case was pending

19 in the courts.

20 In the end this case was successfully won by the

21 companies and the requests from the tax committees were

22 denied by the courts as long as we were present in

23 Kazakhstan, and only months later did we learn that the

24 supervisory authorities had reconsidered the case and

25 actually decided differently. It was much later, at

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09:47 1 a much later stage, that we actually learnt about this

2 final outcome.

3 So, to your question: no, we did not pay these taxes

4 because we did not have the legal duty to pay these

5 taxes for the reasons I stated.

6 MR TIRADO: Thank you very much, Mr Condorachi. No further

7 questions, sir.

8 THE CHAIRMAN: Thank you very much indeed. Do we have some

9 re-direct?

10 MS ROEBUCK FREY: Yes, very brief.

11 (9.48 am)

12 Re-direct examination by MS ROEBUCK FREY

13 Q. I'd like to refer the witness -- and the Tribunal and

14 the respondent -- back to Exhibit R-244. I am referring

15 Mr Condorachi to section 1.4.5.

16 Mr Condorachi, do you see that section?

17 A. Yes, I do.

18 Q. Can you read the sentence that is underneath the four

19 bullet points in that section.

20 A. Yes:

21 "According to the project decisions, the oil

22 collector will be built with long-term operation life

23 and more detailed design decisions will be detailed in

24 Chapter 4."

25 THE INTERPRETER: That's a shorter version of the

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<p>09:49 1 translation; sorry for that. The interpreters do not</p> <p>2 have the document.</p> <p>3 Q. Is there any reference in this section to a "trunk</p> <p>4 pipeline" or a "main pipeline"?</p> <p>5 A. No, there is no mention of "trunk pipeline".</p> <p>6 THE INTERPRETER: In Russian, "trunk" and "main" is</p> <p>7 translated by the same word. That's the interpreter's</p> <p>8 notice.</p> <p>9 Q. Thank you. To your knowledge, if you know, what is</p> <p>10 an "oil collector" that's referred to in this sentence?</p> <p>11 A. I'm not a technical expert but, as I know, the collector</p> <p>12 is a pipe which collects the oil from the wells, from</p> <p>13 the fields, to be further transported to its</p> <p>14 destination. And this oil will either be transported to</p> <p>15 the treatment facility or to the storage.</p> <p>16 MS ROEBUCK FREY: Thank you.</p> <p>17 Mr Chairman, I don't have any more questions for the</p> <p>18 witness. However, since there is a translation issue</p> <p>19 with this document, the claimants would like to, at</p> <p>20 a later time, submit a corrected English translation</p> <p>21 into the record.</p> <p>22 THE CHAIRMAN: Perhaps the parties could have an exchange on</p> <p>23 that, so that we don't have a dispute.</p> <p>24 MS ROEBUCK FREY: Thank you.</p> <p>25 MR TIRADO: Agreed, thank you.</p> <p style="text-align: center;">Page 9</p>	<p>09:53 1 MR HAIGH: Thank you. That's all I wanted to clarify.</p> <p>2 Thanks.</p> <p>3 PROFESSOR LEBEDEV: We have received these two documents.</p> <p>4 To which point or subject do they relate?</p> <p>5 MS ROEBUCK FREY: Professor Lebedev, are you referring to</p> <p>6 R-244?</p> <p>7 PROFESSOR LEBEDEV: Yes.</p> <p>8 MS ROEBUCK FREY: That's the document that I just asked</p> <p>9 Mr Condorachi to read from. I was giving it to you</p> <p>10 again this morning, just in case you didn't have it in</p> <p>11 front of you.</p> <p>12 THE CHAIRMAN: Alright, that seems to end the questioning.</p> <p>13 Thank you very much for being so patient. That is the</p> <p>14 end of your testimony. Thank you very much.</p> <p>15 So Mr Cojin is the next witness. Is he here?</p> <p>16 MS ROEBUCK FREY: That's correct, and he is here. (Pause)</p> <p>17 (9.55 am)</p> <p>18 MR ALEXANDRU COJIN (called)</p> <p>19 (Evidence interpreted)</p> <p>20 THE CHAIRMAN: Welcome, Mr Cojin. You know by now that we</p> <p>21 are expecting you to read out to us the short</p> <p>22 declaration for witnesses. I don't know whether it's</p> <p>23 already available in Russian. Otherwise we will do the</p> <p>24 same as yesterday.</p> <p>25 Would the interpreter be kind enough to read it in</p> <p style="text-align: center;">Page 11</p>
<p>09:51 1 THE CHAIRMAN: Any questions from my colleagues?</p> <p>2 MR HAIGH: Thank you, Mr Chairman. I just want to ask</p> <p>3 counsel about the answer given by Mr Condorachi</p> <p>4 yesterday in his cross-examination about this document</p> <p>5 that it appeared, judging by everything he could see,</p> <p>6 that it must be related to the pipeline that was the</p> <p>7 subject of the criminal trial. I just want to make</p> <p>8 sure: is that now being questioned or challenged by the</p> <p>9 claimant?</p> <p>10 MS ROEBUCK FREY: No, I think the witness's testimony from</p> <p>11 yesterday is fine on this. If you have additional</p> <p>12 questions that you'd like to ask the witness about this</p> <p>13 pipeline, I invite you to do so.</p> <p>14 MR HAIGH: Yes, of course. I just wanted to know whether</p> <p>15 the translation difference altered that response.</p> <p>16 MR SMITH: Mr Haigh, just to be clear, the English</p> <p>17 translation that was provided yesterday indicated that</p> <p>18 the design criteria for the KPM pipeline segment, which</p> <p>19 is the one that was at issue in the criminal trial,</p> <p>20 indicated the design criteria being for a trunk</p> <p>21 pipeline. The point is that English translation was</p> <p>22 inaccurate; it actually is for an oil collector,</p> <p>23 according to the witness, a pipeline, not a trunk</p> <p>24 pipeline. But it is the same pipeline that was at</p> <p>25 issue.</p> <p style="text-align: center;">Page 10</p>	<p>09:56 1 Russian to the witness and he can then confirm.</p> <p>2 THE INTERPRETER: (Reads out witness declaration)</p> <p>3 THE WITNESS: Yes, I accept this.</p> <p>4 THE CHAIRMAN: Thank you very much. Could you please start.</p> <p>5 MS ROEBUCK FREY: Yes, thank you.</p> <p>6 (9.57 am)</p> <p>7 Direct examination by MS ROEBUCK FREY</p> <p>8 Q. Good morning, Mr Cojin. Do you have your two witness</p> <p>9 statements that you submitted in this proceeding before</p> <p>10 you?</p> <p>11 A. Yes, I have them.</p> <p>12 Q. Can you please confirm the accuracy of the contents of</p> <p>13 those statements?</p> <p>14 A. Yes, of course I confirm the accuracy of my statements.</p> <p>15 Q. Thank you.</p> <p>16 Mr Cojin, you will have seen that there have been</p> <p>17 many references in this proceeding to the notion of</p> <p>18 a contract territory, and whether pipelines being inside</p> <p>19 or outside the contract territory affects their</p> <p>20 classification.</p> <p>21 Can you please explain to the Tribunal, to your</p> <p>22 knowledge, the notion of a contract territory; and what</p> <p>23 effect, if any, that has on pipeline classification.</p> <p>24 A. Yes, of course. I will explain the concept of contract</p> <p>25 territory with pleasure. The fact is that this concept</p> <p style="text-align: center;">Page 12</p>

<p>09:58 1 is geological in its essence, and it relates to the</p> <p>2 geological volume or section of the subsoil which has</p> <p>3 been allocated for exploration to KPM and TNG. It is a section of the</p> <p>4 subsoil where we are entitled to carry out prospecting</p> <p>5 and drill wells.</p> <p>6 As a rule, the contract territory is a projection of</p> <p>7 this section of the subsoil with respect to which we are conducting</p> <p>8 exploration, and it cannot have relation to the superficial soil</p> <p>9 strata to the infrastructure that we build on the surface .</p> <p>10 The upper layer of soil which is allocated for the</p> <p>11 contract territory for construction purposes, for</p> <p>12 building elements of infrastructures, including the</p> <p>13 pipelines and storage, this territory was given to us on</p> <p>14 general grounds by local authorities, by the land</p> <p>15 committee of the district.</p> <p>16 Therefore I don't really understand why the evidence</p> <p>17 and the reports of the experts supplied referred to this</p> <p>18 territory, because the subsoil use contract</p> <p>19 allowed us to --</p> <p>20 MS ROEBUCK FREY: Excuse me, Mr Cojin. Could you speak more</p> <p>21 slowly, please, for the interpreter. Thank you.</p> <p>22 A. We were allowed to build all the necessary elements of</p> <p>23 the infrastructure. I will repeat maybe.</p> <p>24 So the contract territory is in the first place</p> <p>25 a geological concept, I just reiterate, and it is [in]</p> <p>no way related to the infrastructure elements</p> <p style="text-align: center;">Page 13</p>	<p>10:02 1 As at 2008, whilst you were still general director</p> <p>2 of TNG, contract 302 was due to expire on</p> <p>3 30th March 2009? I'm happy to take you to a copy of the</p> <p>4 relevant supplement if that would help. (Handed)</p> <p>5 THE INTERPRETER: Sorry, sir, can you give a reference to</p> <p>6 the exhibit number?</p> <p>7 A. Yes, this was the first contract, but this was actually</p> <p>8 an extension. So you give me not all the documents that</p> <p>9 we had. There were some others.</p> <p>10 MS ROEBUCK FREY: I'm sorry, before you ask your question,</p> <p>11 can you please just clarify what you handed to the</p> <p>12 witness?</p> <p>13 MR RAMSDEN: Apologies. That's addendum no. 5 to</p> <p>14 contract 302. It is part of Exhibit C-53. As C-53 is</p> <p>15 somewhat voluminous, we thought we would try and cut</p> <p>16 down the amount of paperwork this morning.</p> <p>17 Sorry, Mr Cojin. You're correct that the contract</p> <p>18 itself has further sections to it. But I think it's</p> <p>19 correct, isn't it, that supplement no. 5 is the relevant</p> <p>20 section for my question as to whether or not the</p> <p>21 contract was due to expire on 30th March 2009? That's</p> <p>22 correct, isn't it, just for clarification?</p> <p>23 A. No, of course not. The contract did not expire at that</p> <p>24 time. This is the addendum which covers the</p> <p>25 prospecting, the exploration period. There is</p> <p style="text-align: center;">Page 15</p>
<p>10:00 1 constructed on the surface. And this concept of</p> <p>2 contract territory in no way can serve as a basis for</p> <p>3 classification of pipelines. That's all.</p> <p>4 MS ROEBUCK FREY: Thank you. I have no further questions at</p> <p>5 this time.</p> <p>6 THE CHAIRMAN: Alright. We come to cross right away,</p> <p>7 please.</p> <p>8 MR RAMSDEN: Thank you, sir.</p> <p>9 (10.01 am)</p> <p>10 Cross-examination by MR RAMSDEN</p> <p>11 Q. Mr Cojin, you were the general director of TNG from</p> <p>12 April 2001 to May 2009; that's correct, isn't it?</p> <p>13 Sorry, Mr Cojin, I'm not quite sure whether you</p> <p>14 heard that translated. I'll repeat the question.</p> <p>15 It's correct, isn't it, that you were the general</p> <p>16 director of TNG from April 2001 until May 2009? I think</p> <p>17 that's in paragraph 2 of your first statement.</p> <p>18 A. Yes, of course I confirm this.</p> <p>19 Q. And one of TNG's subsoil use contracts was contract 302;</p> <p>20 that's correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the contract as at 2008 was due to expire on</p> <p>23 30th March 2009; that's correct, isn't it?</p> <p>24 A. Can you repeat the question, please?</p> <p>25 Q. Of course.</p> <p style="text-align: center;">Page 14</p>	<p>10:04 1 an exploration period and there is also another period</p> <p>2 of development and production. But this is true: that</p> <p>3 the exploration period finished in March 2009, and</p> <p>4 subsequently there was a development period of the</p> <p>5 field. If I remember correctly now, the entire contract</p> <p>6 ran until the year 2018.</p> <p>7 Q. Okay, thank you.</p> <p>8 So in relation to the exploration period, I think</p> <p>9 you say, you sent a letter to the MEMR requesting</p> <p>10 an extension of that period, and I think that's</p> <p>11 document C-67.</p> <p>12 THE CHAIRMAN: C-67, is that in the hearing bundle? No. It</p> <p>13 makes it difficult if you now start referring to</p> <p>14 documents which are not in the hearing bundle.</p> <p>15 MR RAMSDEN: Apologies. We'll see if we can find you a copy</p> <p>16 of that exhibit.</p> <p>17 A. Yes, such a letter actually existed.</p> <p>18 Q. Thank you.</p> <p>19 A. But I would like to explain. The fact is that</p> <p>20 apparently this letter relates not to all the units that</p> <p>21 we explored; there were several blocks, and this</p> <p>22 apparently pertains to another block, not the main block</p> <p>23 which was handed over into industrial development in</p> <p>24 2007 or 2008.</p> <p>25 Q. Okay. Thank you for that clarification.</p> <p style="text-align: center;">Page 16</p>

<p>10:07 1 However, it is correct, isn't it, that you applied</p> <p>2 for extensions of this period for all those blocks that</p> <p>3 were due to expire on 30th March 2009?</p> <p>4 A. No. The key deposit of gas condensate was at that time</p> <p>5 transferred into industrial development phase -- that</p> <p>6 was the key commercially promising gas condensate</p> <p>7 deposit -- and we asked for permission, apparently, to</p> <p>8 continue exploration of other remaining blocks.</p> <p>9 Q. I see. Thank you.</p> <p>10 So in relation to the extension requests that you</p> <p>11 have in front of you there, it's correct, isn't it,</p> <p>12 that, if granted, such requests would normally be</p> <p>13 associated with an addendum to the contract, similar to</p> <p>14 addendum no. 5 that I showed you earlier?</p> <p>15 A. I'm sorry, could you please repeat your question?</p> <p>16 Q. Of course. I'm sorry, Mr Cojin.</p> <p>17 It is correct, isn't it, that in relation to the</p> <p>18 request that you have in front of you there at C-67, if</p> <p>19 that request were granted by the MEMR, there would be</p> <p>20 an addendum to the contract signed by TNG and the MEMR,</p> <p>21 similar to addendum no. 5 that I think I showed you</p> <p>22 earlier and that's part of Exhibit C-53?</p> <p>23 A. I'm sorry, I don't remember the numbers of the</p> <p>24 contracts. I think I need some additional reference</p> <p>25 here. This applies to Tolkyin field or to the</p> <p style="text-align: center;">Page 17</p>	<p>10:13 1 He's referring to amendments to the addendum:</p> <p>2 "... then the extension can be extended but only if</p> <p>3 [the] addendum to the contract is actually signed."</p> <p>4 Are you able to find that part of his statement?</p> <p>5 A. I'm sorry, I can't see this part, because in the Russian</p> <p>6 version I have only 7.2 and there is only one sentence</p> <p>7 actually. The procedure for extension looks like that,</p> <p>8 and that's all. I have no continuation of this</p> <p>9 paragraph.</p> <p>10 I'm sorry, I can't comment on what I haven't seen.</p> <p>11 Q. That's quite alright. One second; I'll see if we can</p> <p>12 resolve this confusion.</p> <p>13 MS ROEBUCK FREY: I think if Mr Coj in would just look at the</p> <p>14 next page.</p> <p>15 THE WITNESS: I'm sorry, I see the text on the reverse side</p> <p>16 of this sheet. Sorry, it's hardly legible here.</p> <p>17 MR RAMSDEN: So if I can guide you towards the bottom part</p> <p>18 of that paragraph, about three lines from the bottom, at</p> <p>19 least in the English version, he is discussing the</p> <p>20 addendum.</p> <p>21 A. Yes, I've read this. And the question is, please?</p> <p>22 Q. So here Mr Ongarbaev says that the extension only occurs</p> <p>23 if the addendum to the contract is actually signed.</p> <p>24 A. Yes, I can explain. The fact is that, as you see --</p> <p>25 Q. Sorry, if I could just ask my question.</p> <p style="text-align: center;">Page 19</p>
<p>10:10 1 prospecting block? I don't remember.</p> <p>2 Q. Okay, perhaps I can simplify my question. Could I ask</p> <p>3 you to turn back to addendum no. 5, which is document</p> <p>4 C-53. I think we established a little earlier that this</p> <p>5 related to the prolongation of the exploration period</p> <p>6 for at least part of contract 302; that's correct? And</p> <p>7 if we turn to the back page of that document, it's</p> <p>8 an addendum that you had signed. I think that's correct</p> <p>9 as well, isn't it?</p> <p>10 A. No. These are absolutely different things. (Pause)</p> <p>11 Yes, that's absolutely correct, I signed it.</p> <p>12 Q. Okay. Now, if we can just consider the process of</p> <p>13 obtaining such an addendum for an extension. Could</p> <p>14 I ask you to be provided with an excerpt from the</p> <p>15 witness statement of Mr Ongarbaev -- sorry, Mr Cojin,</p> <p>16 you are being passed a document -- and if we turn to</p> <p>17 paragraphs 7.2 and 7.3 of Mr Ongarbaev's statement.</p> <p>18 A. Yes, I see it. But 7.2 says that the extension</p> <p>19 procedure looks like that, and that's all.</p> <p>20 Q. Okay, thank you. And if we move further down in 7.2,</p> <p>21 just towards the end of the paragraph in fact, I think</p> <p>22 three lines from the bottom, in the English version at</p> <p>23 least, Mr Ongarbaev is talking about the discussion of</p> <p>24 an addendum for an extension, and he says:</p> <p>25 "If the subsoil user eventually agrees to these ..."</p> <p style="text-align: center;">Page 18</p>	<p>10:15 1 THE CHAIRMAN: I'm sorry, I didn't hear what you said.</p> <p>2 MR RAMSDEN: Sorry, I was just asking the witness if I could</p> <p>3 ask my question before he provided an answer.</p> <p>4 THE CHAIRMAN: Okay.</p> <p>5 MR RAMSDEN: So according to Mr Ongarbaev, an extension</p> <p>6 isn't granted until the addendum to the contract is</p> <p>7 actually signed. So it's correct, is it not, that in</p> <p>8 relation to an extension request, without a signed</p> <p>9 addendum, TNG would be contractually prohibited from</p> <p>10 further exploration?</p> <p>11 MS ROEBUCK FREY: Mr Cojin, before you answer, I would just</p> <p>12 like to clarify that Mr Cojin is not a lawyer. So to</p> <p>13 the extent this question is referring to what is legally</p> <p>14 required to modify a contract, he wouldn't be able to</p> <p>15 answer that.</p> <p>16 THE CHAIRMAN: I'm sure you are aware of that.</p> <p>17 MR RAMSDEN: I am. The question arises due to his</p> <p>18 involvement in the process and his position within TNG,</p> <p>19 and I accept the limitation of that.</p> <p>20 Sorry, Mr Ongarbaev, would you like me to repeat the</p> <p>21 question? So just going back to what Mr Ongarbaev was</p> <p>22 saying, he was saying that an extension is not granted</p> <p>23 until an addendum to the contract is signed. And my</p> <p>24 question to you therefore is: based on Mr Ongarbaev's</p> <p>25 evidence, it's correct, isn't it, that without a signed</p> <p style="text-align: center;">Page 20</p>

<p>10:17 1 addendum TNG would be contractually prohibited from, in</p> <p>2 this instance, further exploration?</p> <p>3 A. Yes, now I remember. It happened quite some time ago,</p> <p>4 I'm sorry. Probably I was not specific about the dates.</p> <p>5 But I remember this period.</p> <p>6 It's true that we requested extension of the permit</p> <p>7 for exploration which ended in 2009, and we extended</p> <p>8 this period for two years in connection with the</p> <p>9 force majeure circumstances; that is, flooding of the</p> <p>10 territory with seawater. And until this territory was</p> <p>11 dried up, we could not continue our work. The extension was</p> <p>12 granted to us. So this</p> <p>13 actually happened.</p> <p>14 So we applied for extension of the exploration</p> <p>15 period, especially since we had carried out a certain</p> <p>16 volume of work at this territory, drilling certain</p> <p>17 wells. So the works were underway and we wanted to</p> <p>18 carry them on, because in our view this was a promising</p> <p>19 territory which might yield good results.</p> <p>20 But please note the date of the letter: as you see,</p> <p>21 it is October 2008. This is the time when very serious</p> <p>22 persecutions of our company started, and we turned to</p> <p>23 Mr Batalov with this letter. And the next four or five</p> <p>24 months, while I was staying in Kazakhstan, we kept --</p> <p>25 Q. Mr Cojin, I'm very sorry to interrupt you, but I think</p> <p>my question was more limited than that. My question was</p> <p style="text-align: center;">Page 21</p>	<p>10:21 1 A. You mean the first witness statement; correct?</p> <p>2 Q. I'm sorry, yes. Your first witness statement at</p> <p>3 paragraph 18.</p> <p>4 A. Yes, I see it.</p> <p>5 Q. If we can just move on to paragraph 6 of that witness</p> <p>6 statement. You are discussing here, I think, the</p> <p>7 general effect you say occurred to TNG as a result of</p> <p>8 inspections. In paragraph 6 you say you:</p> <p>9 "... witnessed KPM and TNG transformed from working,</p> <p>10 fully operative and functional oil and gas production</p> <p>11 companies to two bodies that exist to answer [questions]</p> <p>12 from various Government officials and write reports.</p> <p>13 This process began [in] around November 2008 ... "</p> <p>14 However, my question to you is that as you left</p> <p>15 Kazakhstan in early April 2009, it's correct, isn't it,</p> <p>16 that you were only actually present for about six months</p> <p>17 from November [2008]?</p> <p>18 A. Yes, this is correct.</p> <p>19 Q. Okay, thank you. We'll move on in that case.</p> <p>20 In paragraph 4 of your first witness statement you</p> <p>21 discuss an inspection by the geology committee in</p> <p>22 October 2008, and you say there that you:</p> <p>23 "... accompanied the men and aided the inspection on</p> <p>24 behalf of TNG ..."</p> <p>25 You say also that Mr Salagor represented KPM in</p> <p style="text-align: center;">Page 23</p>
<p>10:19 1 simply whether, without a signed addendum, TNG would be</p> <p>2 contractually prohibited from further exploration.</p> <p>3 MS ROEBUCK FREY: I'm sorry, I have to object to that</p> <p>4 question.</p> <p>5 THE CHAIRMAN: It is a legal question as you phrase it. But</p> <p>6 of course I do understand that the witness was involved</p> <p>7 at that time, and you may ask whether his impression as</p> <p>8 a non-jurist was that this was as you say.</p> <p>9 MR RAMSDEN: Absolutely. Simply his understanding of the</p> <p>10 position as the general director of TNG.</p> <p>11 So, Mr Cojin, sorry, just to repeat, my particular</p> <p>12 question is: in your understanding, is it the case that</p> <p>13 without a signed addendum, TNG was contractually</p> <p>14 prohibited from further exploration?</p> <p>15 A. Yes. This is a clear fact. Of course not. And that's</p> <p>16 why we were attempting -- insisted that such an addendum</p> <p>17 be signed, and we submitted it with all the necessary</p> <p>18 accompanying documents to the ministry. But within the</p> <p>19 four or five months while I stayed in Kazakhstan, there</p> <p>20 was no result. And this is also related to the</p> <p>21 processes that took place at the end of the year 2008.</p> <p>22 Q. Okay, thank you. We'll move on in that case.</p> <p>23 Now, I think it's correct, just returning to your</p> <p>24 first witness statement at paragraph 18, you say you</p> <p>25 left Kazakhstan in early April 2009. Is that correct?</p> <p style="text-align: center;">Page 22</p>	<p>10:24 1 an equivalent inspection.</p> <p>2 Now, Mr Salagor is not the general director of KPM,</p> <p>3 is he -- or rather was he, at that time? That was</p> <p>4 Mr Cornegruta.</p> <p>5 A. Yes, that's quite correct. But I don't say here that he</p> <p>6 was director general.</p> <p>7 Q. I quite agree.</p> <p>8 A. Yes, he was present there but he was not director</p> <p>9 general.</p> <p>10 Q. You, however, were the director general of TNG at that</p> <p>11 time. Isn't it unusual for a director general to attend</p> <p>12 such an inspection?</p> <p>13 A. Of course it is not a normal situation, but since the</p> <p>14 situation was interesting -- this was actually planned</p> <p>15 inspection on behalf of the geology committee, but it</p> <p>16 was accompanied by members of the financial police. So</p> <p>17 this was a strange symbiosis, and I realised that the</p> <p>18 situation became more complicated because we knew at</p> <p>19 that time about the application of Mr Voronin to</p> <p>20 President Nazarbayev and President Nazarbayev's</p> <p>21 resolution. So I was -- I wanted to see to it that all</p> <p>22 the nuances be correctly observed during this inspection</p> <p>23 because in the final account, as director general,</p> <p>24 I would be responsible for that.</p> <p>25 Of course, all the previous inspections in the</p> <p style="text-align: center;">Page 24</p>

10:25 1 previous years, I had not participated in such
 2 inspections. It is probably too strongly formulated
 3 here that I actually attended or accompanied the
 4 inspection. Rather I was treating it with great
 5 attention.
 6 Q. So, just to be clear, you didn't accompany the
 7 inspection team on their inspection; is that correct?
 8 A. No, I didn't accompany the inspection team. The
 9 inspection team was working in contact with the
 10 specialists of the company, according to respective
 11 areas of their activity. So I did not participate in
 12 the meetings of the group; I just gave greater attention
 13 to this inspection than to the earlier ones. Not more
 14 than that.
 15 Q. Okay, thank you.
 16 THE CHAIRMAN: May I, just to clarify: what about
 17 Mr Salagor, was he in person present at the site? I'm
 18 not quite sure about that from what you said.
 19 A. Mr Salagor was present, he was in Kazakhstan at that
 20 time, and he stayed at his office. Not more than that.
 21 THE CHAIRMAN: And the office was where?
 22 A. At that time he was working with us and his office was
 23 at our premises. He was the commercial director, if
 24 I remember correctly. He was an employee of the
 25 company, but not the director general. I believe he was

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10:27 1 commercial director.
 2 MR RAMSDEN: Nevertheless, although you now say you did not
 3 accompany the teams, you say that the financial police
 4 insisted on including certain wording in the geology
 5 committee's report as to whether TNG's licence covered
 6 a main pipeline; that's correct, isn't it?
 7 A. I can explain the situation.
 8 At the final stage of the inspection, one of the
 9 officers of the financial police was very active and
 10 insisted that we should include this second sentence
 11 which describes the situation that we don't have
 12 a licence or licenses for operating main pipelines.
 13 Mr Cornegruta at that time was there. We asked why this
 14 was needed and he said, "This is needed."
 15 We refused to sign this document, and then we were
 16 told that, "In this case your inspection protocol will
 17 not be confirmed, and this will create great problems
 18 for you with observance of the contract," because in
 19 this way the contract would be violated. So the
 20 representative of the ministry said that, "Look, you
 21 don't have main pipelines, why don't you wish to sign
 22 this sentence?"
 23 So it took two or three days for us to take the
 24 decision, but since we needed for our subsequent normal
 25 operation to have a signed protocol of the inspection,

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10:29 1 we signed it, proceeding from the fact that we had never
 2 operated a main pipeline. But this was done only on the
 3 insistence of an officer of the financial police.
 4 Q. Okay, thank you. Now, neither Mr Salagor nor
 5 Mr [Cornegruta] are here to give evidence of those
 6 events, are they?
 7 THE CHAIRMAN: Either they are or not. The witness can't
 8 help.
 9 MR RAMSDEN: The same entry to which you referred is
 10 included in the KPM inspection report, isn't it? I can
 11 take you to that document if it would help: that's C-86.
 12 A. Yes, thank you. I know that a similar entry was made.
 13 Q. Okay. But there is no witness here from KPM.
 14 A. I think I can give testimony on this subject as well,
 15 because at that time I was first deputy director general
 16 of KPM.
 17 Q. Okay, thank you.
 18 If we could move on to paragraph 12, please, of your
 19 second witness statement. In the opening lines of that
 20 [paragraph] you say:
 21 "The inspections that the Financial Police ordered
 22 in the fall of 2008 were like nothing our companies had
 23 experienced before."
 24 However, in paragraph 13 of your statement you do
 25 say that the company had never been accused of illegal

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10:32 1 or criminal activity before. Therefore it's not
 2 surprising, is it, that you had not experienced
 3 inspections such as those in the fall of 2008 that were
 4 connected with a criminal investigation, if the company
 5 had not been part of a criminal investigation before?
 6 A. It is correct that we had never been accused of any
 7 criminal activities before. But I believe this kind of
 8 accusation is ungrounded.
 9 Q. But if you have not been a part of a criminal
 10 investigation before, my point is simply that you would
 11 not have experienced what goes on during a criminal
 12 investigation before, and so you would not have
 13 experienced inspections of the nature that you say you
 14 did in November 2008. That's correct, isn't it?
 15 A. Well, I reiterate: yes, I had never experienced and the
 16 company had never experienced criminal accusations, and
 17 it was unusual for us because the volumes of the
 18 information which were requested, and the directions of
 19 the investigation of the financial police, gave us
 20 reason to think that they came to the company in order
 21 to find something criminal. And that's what they've
 22 picked up on: that was the main pipelines allegations.
 23 Q. Okay. If we just turn to paragraph 10, please, of your
 24 first witness statement. You say there, towards the
 25 bottom of the paragraph, that TNG had to submit:

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10:34 1 "... information and documents amounting to nearly
 2 three times more than the requests submitted in relation
 3 to the ... investigation [of] KPM."
 4 However, TNG, as you say a little earlier in that
 5 paragraph, was accused of operating three main
 6 pipelines, whereas KPM was only accused of operating one
 7 main pipeline. So there is nothing exceptional, is
 8 there, in the fact that you had to submit information on
 9 all three pipelines?
 10 A. Yes, of course it is easy to understand. You have three
 11 designs, you have three decisions, you have three
 12 volumes of liquids and gas; naturally there will be more
 13 information. While KPM only owned one pipeline for
 14 pumping oil.
 15 Q. Thank you.
 16 Moving on now to paragraph 16 of your first witness
 17 statement, you are describing an interview with the
 18 financial police. You appear to express some surprise
 19 that at that interview the financial police asked you
 20 about your relationship with Mr Anatolie Stati, and that
 21 they wanted to know his whereabouts and how to locate
 22 him.
 23 However, in light of the allegations that had been
 24 made against Mr Stati, it's no surprise, is it, that the
 25 financial police were interested in understanding --

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10:37 1 THE CHAIRMAN: I'm terribly sorry. He's a fact witness and
 2 you are now, for the second time, asking for
 3 an evaluation of the behaviour of the financial police.
 4 He is not the right person to ask that to.
 5 MR RAMSDEN: Thank you. Okay, we have no further questions.
 6 Thank you.
 7 THE CHAIRMAN: Any questions from the claimants' side?
 8 MS ROEBUCK FREY: I do. Again, I'll be brief.
 9 (10.37 am)
 10 Direct examination by MS ROEBUCK FREY
 11 Q. Mr Cojin, you stated during your cross-examination that
 12 you did not accompany the inspection teams during the
 13 November 2008 geology committee inspection. Do you mean
 14 that you did not accompany those teams to the fields?
 15 A. Yes, this is exactly what I mean. I did not accompany
 16 them to the fields; I remained in the office. I did not
 17 personally directly participate in these inspections,
 18 but I received the information people reported to me
 19 about the results of the inspections. So I was fully
 20 aware of the work of the inspections.
 21 So you could say that I followed up the inspections,
 22 but I did not personally accompany them. But I followed
 23 up; I was there, you could say, in this way.
 24 Q. And were you present in the KPM/TNG offices in Aktau
 25 during the course of this inspection?

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10:38 1 A. Yes, I was present there at this moment. I was in the
 2 office.
 3 Q. And did you personally have the meetings and discussions
 4 that you mentioned during your cross-examination
 5 testimony with representatives from the financial
 6 police?
 7 A. Yes. The representatives from the financial police came
 8 from time to time to our office -- they could not
 9 disturb us too often because we were very busy with
 10 production -- and they would put some questions.
 11 I can't recall it in detail, but I very well remember
 12 this particular line of discussion that we do not have
 13 the licence for exploration -- this particular sentence
 14 on -- the licence for using the main pipeline. I very
 15 well remember the discussion about us not having the
 16 pipeline.
 17 Q. Was Mr Cornegruta present during that discussion as
 18 well?
 19 A. Yes, he was also present in the office in the town of
 20 Aktau at that moment.
 21 MS ROEBUCK FREY: Thank you. I have no further questions.
 22 THE CHAIRMAN: Any further questions from the respondent's
 23 side?
 24 MR RAMSDEN: No, we have no further questions.
 25 THE CHAIRMAN: Questions from here?

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10:40 1 MR HAIGH: No, thank you.
 2 PROFESSOR LEBEDEV: No.
 3 THE CHAIRMAN: Not from me. So thank you. Thank you very
 4 much indeed. You are relieved.
 5 THE WITNESS: Thank you.
 6 THE CHAIRMAN: So Mr Stejar is the next witness. Do you
 7 need five minutes to get this organised?
 8 MS ROEBUCK FREY: Yes, thank you.
 9 THE CHAIRMAN: Okay. Five minutes' break.
 10 (10.40 am)
 11 (A short break)
 12 (10.52 am)
 13 MR VEACESLAV STEJAR (called)
 14 (Evidence interpreted)
 15 THE CHAIRMAN: We resume the hearing. Good morning,
 16 Mr Stejar. You have to push the buttons for the
 17 microphones. Both, that may be the best way of doing
 18 it. Does the translation reach you?
 19 THE WITNESS: Yes, I do hear the translation.
 20 THE CHAIRMAN: I understand there is now a declaration in
 21 Russian translation in front of you, a sheet of paper.
 22 If you would be kind enough to read it out to us.
 23 THE WITNESS: I am aware that in my testimony I have to tell
 24 the truth and nothing but the truth. I am also aware
 25 that if I do not comply with this obligation, I may face

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10:53 1 severe legal consequences. Yes, I do confirm and I am
 2 aware.
 3 THE CHAIRMAN: Thank you very much indeed.
 4 We now come to direct, please.
 5 (10.53 am)
 6 Direct examination by MS ROEBUCK FREY
 7 Q. Mr Stejar, do you have a copy of your witness statement
 8 on the table in front of you?
 9 A. Yes. These are my witness statements signed by myself.
 10 Q. Thank you. And can you please confirm that the contents
 11 of your witness statement remains true today?
 12 A. Yes, they remain true, as I signed.
 13 Q. A witness for the respondent in this case, Mr Rakhimov,
 14 has disputed your testimony with regard to a search that
 15 occurred in May 2009, and I'd like to hand you the
 16 minutes of that search and ask you a question about it.
 17 This is Exhibit C-114.
 18 A. Yes, I can see two minutes.
 19 Q. Thank you. As you just said, there are two separate
 20 minutes of this search contained in the same exhibit,
 21 C-114.
 22 Can you explain why there are two separate minutes
 23 of the search?
 24 A. We are looking at two separate minutes because the
 25 employees of the financial police were split into two

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10:55 1 groups in order to carry out this search of the office.
 2 Q. Thank you. In the first minutes of the search, I see
 3 that two witnesses are named. Can you please tell me
 4 their names?
 5 A. Mr Kulbaev and Mr Duisengaliev. This is based on the
 6 first minutes.
 7 Q. Yes. And on the second minutes of the search there are
 8 two additional names --
 9 A. Mr Serikbaev and Aytkaliev.
 10 Q. I'm sorry, I didn't get your answer because I think you
 11 had started speaking before I had finished my statement,
 12 and the translators were having trouble keeping up with
 13 you. Can you repeat what you just said?
 14 A. In the first minutes we have two witnesses, and in the
 15 second minutes there are two other persons stated as
 16 witnesses.
 17 THE INTERPRETER: Their names are in the transcript.
 18 Q. Were you introduced to any of these four witnesses
 19 during the search?
 20 A. No. When the search started, these witnesses were not
 21 there.
 22 Q. Did you ever see these witnesses during the search?
 23 A. During the search, these witnesses -- I did not see
 24 these witnesses during the search; they were not
 25 introduced to us.

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10:57 1 Q. Did these witnesses sign the minutes of the search?
 2 A. If I may, I could clarify.
 3 On the 8th, when these minutes were signed, the
 4 officials of the financial police came to our office and
 5 I disagreed with certain sentences in these minutes.
 6 For this reason we followed the officials to the
 7 financial police office, they redrafted the minutes, and
 8 accordingly for the first time I met the witnesses.
 9 These were the people who were there at the moment when
 10 the minutes were signed.
 11 So they were only present during this short moment
 12 when the minutes were signed. Prior to that moment,
 13 there had been no witnesses.
 14 MS ROEBUCK FREY: Thank you. I have no further questions at
 15 this time.
 16 THE CHAIRMAN: Alright. We come to cross.
 17 (10.59 am)
 18 Cross-examination by DR NACIMIENTO
 19 Q. Good morning, Mr Stejar.
 20 A. Good morning.
 21 Q. In paragraph 14 of your witness statement you are
 22 referring to the search of May 2009. Were there any of
 23 the claimants' witnesses present at that time?
 24 THE CHAIRMAN: I'm sorry, when you say "witnesses", what do
 25 you mean by that?

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11:00 1 DR NACIMIENTO: Witnesses in this arbitration.
 2 THE CHAIRMAN: Okay.
 3 A. So you are speaking about the people currently present
 4 in this room?
 5 DR NACIMIENTO: That's right.
 6 A. Yes: Mr Rakhimov. And if I recall correctly, at that
 7 time he was senior lieutenant, I don't recall his
 8 name -- I think his name is Kyrat, but I don't recall
 9 his surname -- I believe he is also present in this
 10 hearing today.
 11 Q. Was anyone else present?
 12 A. There were also -- I don't recall that any other people
 13 present here today attended to this search. There were
 14 other people representing the financial police, and it's
 15 been a long time and I don't have the duty to recall
 16 everyone.
 17 Q. You have a background in economics; that's correct?
 18 A. That's correct.
 19 Q. In paragraph 12 of your witness statement you make
 20 a statement regarding the classification of pipelines.
 21 It's correct that you're not a pipeline expert, right?
 22 A. It is correct, I am not an expert in the field of
 23 pipelines. However, as an employee, I couldn't
 24 understand: how possibly did these pipelines count as
 25 in-field pipelines, while suddenly seven years later

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<p>11:03 1 they turned out to be trunk pipelines?</p> <p>2 Q. Your duties in the company were relating to the economic 3 and financial issues, right?</p> <p>4 A. That's right.</p> <p>5 Q. So let me ask you one question in that regard. 6 Is it correct that at the end of 2009 KPM agreed to 7 extend the payment terms for their largest two 8 customers, Statoil and General Affinity Limited?</p> <p>9 MS ROEBUCK FREY: Excuse me, I think this goes far outside 10 of Mr Stejar's witness statement. I'm not sure if it's 11 a proper question.</p> <p>12 DR NACIMIENTO: Then maybe I may address also the basically 13 supplementary witness [testimony] that we were hearing 14 today in direct examination. This relates to 15 a document, it's a financial statement, it's within its 16 competence. I do not see why we cannot ask him 17 a question that's within his competence.</p> <p>18 MS ROEBUCK FREY: I'd like you to show him the document, if 19 you'd like to do that.</p> <p>20 DR NACIMIENTO: That's fine. Could you please show him the 21 document: it's R-37.6. While we search for this 22 document, maybe some general questions on that. 23 Were you dealing with the largest customers, Statoil 24 and General Affinity? Was this part of your duties in 25 the company?</p> <p style="text-align: center;">Page 37</p>	<p>11:06 1 their significance in the list of our clients, it's hard</p> <p>2 for me to make any statement. The only thing I can 3 confirm, which I have just done, is that we did have 4 contracts with these two customers.</p> <p>5 Q. If you cannot say if they were the largest customers, 6 can you say if they were important customers, or among 7 the important customers?</p> <p>8 A. As I already said. I have already given you the answer.</p> <p>9 Q. No, I asked another question. I'm not asking about the 10 largest customers, but were those two among the 11 important customers?</p> <p>12 A. Well, you have reiterated your question actually. 13 I cannot conclude whether -- I cannot make a statement 14 whether these were the most important or the largest 15 customers. I have confirmed to you that we had 16 contracts with these companies.</p> <p>17 THE CHAIRMAN: I'm sorry, but I have to tell the witness: 18 the question was rephrased, and if you say after two 19 years you don't remember that these companies were among 20 the important customers, we will take it as you say. 21 But please answer that question.</p> <p>22 A. I don't have anything to add to what I have already 23 said.</p> <p>24 DR NACIMIENTO: While we wait for the document, let's move 25 on to another question for the time being.</p> <p style="text-align: center;">Page 39</p>
<p>11:05 1 MS ROEBUCK FREY: Excuse me. I would just like to clarify:</p> <p>2 this document is an annual report from Tristan Oil 3 Limited. Mr Stejar has no experience with Tristan Oil 4 Limited.</p> <p>5 DR NACIMIENTO: Why can we not establish whether it is 6 within his experience or not? It's the largest 7 customers, and if we -- we just wait for his answer, 8 okay?</p> <p>9 THE CHAIRMAN: I think we can wait for his answer. 10 Obviously the witness can say, "I don't know this 11 document," and that's it.</p> <p>12 DR NACIMIENTO: So my question again: were you dealing with 13 Statoil and General Affinity Limited within your duties 14 in the company?</p> <p>15 A. Yes, we did have contracts and contractual obligations 16 towards these two companies.</p> <p>17 Q. And is it correct that they were the largest two 18 customers?</p> <p>19 A. Are you referring to this report in support of this 20 statement? Could you please tell me where I can see 21 this --</p> <p>22 Q. I am not referring to anything right now. I am just 23 asking: were those the two largest customers?</p> <p>24 A. Well, it's been two years since I left the company, so 25 to make a statement regarding the largest customers or</p> <p style="text-align: center;">Page 38</p>	<p>11:09 1 MS ROEBUCK FREY: Excuse me. Before you do, I would just</p> <p>2 like to state that we've been told that your question 3 was translated incorrectly, and the reformulated 4 question was translated as to whether these were the 5 largest companies again. So I am not certain that the 6 witness understood the distinction between the two 7 questions.</p> <p>8 THE CHAIRMAN: Well, let's try again.</p> <p>9 DR NACIMIENTO: My question was whether Statoil and General 10 Affinities were among the most important customers for 11 your company.</p> <p>12 A. I can confirm that we had contractual obligations 13 towards these companies.</p> <p>14 Q. That's okay. Thank you. 15 Can I refer you to F3 in the financial statement 16 2009. It's R-37.6. It's actually the third page of the 17 combined financial statements.</p> <p>18 THE CHAIRMAN: Perhaps, for the record, you would say of 19 whom.</p> <p>20 DR NACIMIENTO: It's the combined financial statements for 21 KPM, TNG and Tristan Oil.</p> <p>22 A. Excuse me, madam, which page is the first page of this 23 document? I believe the previous page is the first one.</p> <p>24 THE INTERPRETER: The witness is looking at the Russian 25 version, I presume.</p> <p style="text-align: center;">Page 40</p>

<p>11:11 1 A. I am looking at the report of Tristan Oil, between KPM,</p> <p>2 TNG and Tristan Oil. And I want to clarify that</p> <p>3 I worked for the entity in the territory of Kazakhstan</p> <p>4 of a particular company: KPM and TNG. And when it comes</p> <p>5 to making any statements concerning this consolidated</p> <p>6 report, I am not prepared to make any statements</p> <p>7 regarding this consolidated report. I had nothing to do</p> <p>8 with this report.</p> <p>9 Q. You had nothing to do with it within your function as</p> <p>10 being responsible for the economy and financial</p> <p>11 questions for KPM?</p> <p>12 A. I had something to do with the report of KPM.</p> <p>13 Q. This is a consolidated report, and you had nothing to do</p> <p>14 with that?</p> <p>15 A. No, I had never worked with it. I had nothing to do</p> <p>16 with this report. I only dealt with the financial</p> <p>17 accounting of KPM, as I was the general -- I was</p> <p>18 appointed as general director of the company in</p> <p>19 December 2009. Accordingly I had something to do with</p> <p>20 the financial report of KPM for 2009. This is it.</p> <p>21 DR NACIMIENTO: I have no further questions. Thank you.</p> <p>22 THE CHAIRMAN: Alright. Any questions in re-direct?</p> <p>23 MS ROEBUCK FREY: No, thank you.</p> <p>24 THE CHAIRMAN: No. Many questions from your side?</p> <p>25 MR HAIGH: Just one question.</p> <p style="text-align: center;">Page 41</p>	<p>11:15 1 arbitrator. Could I just have another question? Is</p> <p>2 Mr Stejar still here? I'm sorry.</p> <p>3 THE CHAIRMAN: Is he still here?</p> <p>4 Mr Stejar, could you just come back for a second,</p> <p>5 please.</p> <p>6 DR NACIMIENTO: Just to clarify the record.</p> <p>7 THE CHAIRMAN: That's okay.</p> <p>8 (11.16 am)</p> <p>9 Further cross-examination by DR NACIMIENTO</p> <p>10 Q. Mr Stejar, my question had been if any of claimants'</p> <p>11 witnesses had been present in the room during the</p> <p>12 search. It was then also clarified upon a question of</p> <p>13 the Chairman whether I meant witnesses of claimants in</p> <p>14 this arbitration. You then answered regarding only</p> <p>15 respondent's [witnesses], and you then said:</p> <p>16 "Answer: ... I don't have the duty to recall</p> <p>17 everyone."</p> <p>18 Upon a clarification of Mr Haigh, you said that</p> <p>19 everyone else was present. Can you tell us the names,</p> <p>20 please?</p> <p>21 A. I'm sorry, probably, if I understand correctly the</p> <p>22 translation, who was -- I wish to clarify. Do you mean</p> <p>23 who of the members of the staff of the company were</p> <p>24 present during the search?</p> <p>25 Q. That's right.</p> <p style="text-align: center;">Page 43</p>
<p>11:13 1 (11.14 am)</p> <p>2 Questions from THE TRIBUNAL</p> <p>3 MR HAIGH: Mr Stejar, you were asked at the beginning of</p> <p>4 your examination here whether there were any claimants'</p> <p>5 witnesses present during the search in May 2009. Do you</p> <p>6 recall that?</p> <p>7 THE CHAIRMAN: I think "witnesses", without saying whether</p> <p>8 they were claimants' or respondent's.</p> <p>9 A. Yes, I do recall. If you are speaking about the</p> <p>10 witnesses on the side of claimants, I can clarify that</p> <p>11 there were no invited witnesses. But the entire staff</p> <p>12 who at that time were present in the office, they all</p> <p>13 attended the search.</p> <p>14 MR HAIGH: And were you personally present during that</p> <p>15 search?</p> <p>16 A. Yes, I personally was present as well.</p> <p>17 MR HAIGH: Thank you.</p> <p>18 THE CHAIRMAN: Thank you. Any questions from you? No</p> <p>19 questions from me. That was short. Thank you very</p> <p>20 much.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 THE CHAIRMAN: Mr Calancea is the next witness, I take it?</p> <p>23 The next and last for this round.</p> <p>24 DR NACIMIENTO: I'm sorry, Mr Chairman, because I just</p> <p>25 referred to the record again, and to the question of the</p> <p style="text-align: center;">Page 42</p>	<p>11:17 1 A. There were about 60 persons at the office.</p> <p>2 Q. And anyone of claimants' witnesses present in this</p> <p>3 arbitration?</p> <p>4 MR HAIGH: Excuse me for interrupting, but do you mean in</p> <p>5 addition to himself?</p> <p>6 DR NACIMIENTO: Yes.</p> <p>7 A. I don't remember exactly, but I think some of our</p> <p>8 lawyers were also at the office at that time.</p> <p>9 Q. Who of your lawyers?</p> <p>10 A. I'm sorry, I can't recall exactly. This would be the</p> <p>11 correct answer.</p> <p>12 Q. You cannot recall whether anyone in this room on</p> <p>13 claimants' side was present during that search?</p> <p>14 A. No. It was either Mr Condorachi or Mr Poskaruk; one of</p> <p>15 them. As far as I remember, one of them was present.</p> <p>16 DR NACIMIENTO: No further questions, thank you.</p> <p>17 THE CHAIRMAN: Thank you again. Now you are really</p> <p>18 relieved.</p> <p>19 (11.19 am)</p> <p>20 MR EDUARD CALANCEA (called)</p> <p>21 THE CHAIRMAN: Welcome, Mr Calancea. You know the procedure</p> <p>22 by now. I think you have a sheet of paper in front of</p> <p>23 you in Russian, which is the witness declaration that we</p> <p>24 use. Would you be kind enough to read it out, if that's</p> <p>25 agreeable to you?</p> <p style="text-align: center;">Page 44</p>

11:19 1 THE WITNESS: Yes, I've read it and I accept it. I am aware
 2 of all the elements in it.
 3 THE CHAIRMAN: Thank you. Alright.
 4 (11.19 am)
 5 Direct examination by MS ROEBUCK FREY
 6 Q. Good morning, Mr Calancea. Do you have a copy of your
 7 witness statement in front of you?
 8 A. Yes, I have it.
 9 Q. Do you confirm the accuracy of the contents of that
 10 statement?
 11 A. Yes, I confirm it, the accuracy of this statement.
 12 Q. Thank you. Can you briefly describe your educational
 13 background to the Tribunal?
 14 A. I have higher economic education. I am a doctor in
 15 economics, and I am senior lecturer at the chair of
 16 international economic relations at the economic ...
 17 I am doctor of economics and senior lecturer at the
 18 chair of international economic relations. The
 19 university is International Academy of Economic
 20 Knowledge.
 21 Q. Thank you. I am going to pass to you now what is
 22 Exhibit C-711 and C-711.1. Are you familiar with these
 23 documents?
 24 A. Yes, I am familiar with these documents.
 25 MR HAIGH: Just a minute, counsel, I am going to give the
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11:21 1 Russian copy to the translators.
 2 MR TIRADO: I just wonder if you could clarify, please, what
 3 these documents are?
 4 MS ROEBUCK FREY: I was actually just about to ask the
 5 witness to do that.
 6 Mr Calancea, can you please describe what the
 7 document called C-711 is?
 8 A. As I understand, this is a draft report of Mr Rakhimov,
 9 who is an officer of the financial police.
 10 Q. Specifically, if you look at the first page of C-711,
 11 what is this document?
 12 A. This is an excerpt from the electronic correspondence,
 13 email correspondence. This document was received in my
 14 email box.
 15 Q. Who sent you this document?
 16 A. This document I received from the office of
 17 Tolkyneftegaz, TNG, on 9th July.
 18 Q. Do you know specifically the person that sent you the
 19 email with this document attached?
 20 A. Yes, I know specifically who sent me this document from
 21 the office.
 22 Q. And what was his or her position in TNG?
 23 A. Secretary, a secretary of the office.
 24 Q. Did you have any conversation with the secretary after
 25 receiving this email about the email?
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11:24 1 A. Yes. Yes, we had a conversation about this document.
 2 Q. And can you describe that conversation to the Tribunal?
 3 A. The secretary told me that she was asked by the
 4 financial police to forward these documents to a certain
 5 email address, and after she sent these materials she
 6 made a copy, and this copy was forwarded to my email
 7 address.
 8 MS ROEBUCK FREY: Thank you. I have no further questions at
 9 this time.
 10 THE CHAIRMAN: Thank you. We come to cross right away.
 11 (11.25 am)
 12 Cross-examination by MR TIRADO
 13 Q. Good morning, Mr Calancea.
 14 You were the general director of TNG from
 15 December 2009, weren't you?
 16 A. Yes, I occupied the position of general director since
 17 December 2009.
 18 Q. And did you hold any roles at KPM?
 19 A. No, I had no functions at KPM.
 20 Q. If I can take you, please, to your witness statement.
 21 At paragraph 4 of your statement you say that acts
 22 of inspection should have been served before the notices
 23 for breach were sent by the Republic. However, you've
 24 not given any reasons, have you, why acts of inspections
 25 need to be served before notices of breach are sent?
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11:27 1 Have you?
 2 A. Quite the contrary: we must first have the acts of these
 3 unplanned inspections and then notices. But the
 4 chronology, the actual chronology was given. I can
 5 explain. We first received the notice on the 16th,
 6 which was dated the 14th, and the acts of inspections
 7 themselves are dated the 15th. Physically we received
 8 it on 16th July.
 9 Q. Could I ask you to look at Exhibit R-152. This is
 10 a copy of Article 72(3) of the Subsoil Law 2010 ...
 11 MS ROEBUCK FREY: Excuse me again --
 12 MR TIRADO: This is not a legal -- just hear the question,
 13 please.
 14 ... which sets out when a notice of breach will be
 15 served in the event of subsoil user breaches of his
 16 contract. Take it from me, that's what it says.
 17 Can I also ask you to look at Exhibit C-510. This
 18 is section 38 of the Law of Private Business, and this
 19 sets out the process for serving acts of inspection.
 20 Now, I appreciate you are not a lawyer and I am not
 21 asking you to give a legal opinion. But you can see
 22 from a review of these sections, can't you, that the
 23 service of acts of inspection is completely independent
 24 from the service of notices of breach?
 25 THE CHAIRMAN: I'm sorry, that is asking a bit much from
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11:29 1 a witness who is not a lawyer, who is presented texts of

2 laws which he is obviously not prepared for right now.

3 I think even for a lawyer it would be a bit difficult to

4 answer.

5 MR TIRADO: Okay.

6 Well, in that case can I refer you to

7 Mr Ongarbaev's --

8 A. Yet I can reply to this question, I have understood the

9 question. And the text says that unless there are

10 objections, it should be served within three days. And

11 we had objections. So the timeline indicated here was

12 in case there were no objections, but we had objections

13 and you can see these objections in our letters.

14 Do I understand you correctly?

15 Q. Can I now take you to Mr Ongarbaev's witness statement,

16 and in particular paragraph 2.8, where he says:

17 "The audits were undertaken with the participation

18 of KPMs and TNG's representatives. In particular we

19 liaised regularly with a senior representative of those

20 companies, Mr Nourlibekov. Therefore, during the course

21 of the audit both KPM and TNG were aware of the

22 subject matter of the audit and substantially, the

23 findings of the audit. Both companies should therefore

24 have been aware of the various contractual breaches as

25 during the course [of the] audit they were notified of

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11:33 1 receive the acts, you have a certain time to develop

2 a plan for remedying. We had no time to develop such

3 a plan. So we replied on the 19th with respect to the

4 mere fact of receiving the notices.

5 Q. So it's correct to say that you didn't appeal the

6 results within three days, as required by the law?

7 A. What do you mean we did not challenge? Of course if you

8 read our letters you will see our objections. You can't

9 say that we did not appeal. We did indeed appeal and

10 challenge the outcome of the inspections, and this is

11 reflected in our letters.

12 Q. Okay. Let's look at paragraph 6 of your witness

13 statement, please. In this paragraph you talk about

14 your call with Mr Ongarbaev of the Ministry of Oil and

15 Gas, and Mr Utegaliev of KMG. You have provided

16 a transcript of that call at Exhibit C-190; do you agree

17 with its content?

18 A. Yes. This is a transcript of a telephone conversation

19 on 22nd July. Yes, of course I accept it. I was there

20 and I was conducting this discussion, this conversation.

21 Q. Can you please explain who prepared this transcript?

22 A. We recorded the conversation with Mr Ongarbaev and

23 Mr Utegaliev, and this record was handed over to our

24 lawyers, and which of them actually made the transcript,

25 I don't know. But this is a transcript of the telephone

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11:31 1 the preliminary results of the audits."

2 So Mr Calancea, effectively you were well aware of

3 the breaches committed during the time of the

4 inspections, weren't you?

5 A. No, we could not know about the breaches in the course

6 of these inspections. There were technical personnel

7 involved in the inspections, but we were not given the

8 acts so that we could get aware. Therefore we cannot

9 say that we knew about the breaches. And in our opinion

10 there were no breaches at all.

11 Therefore we could not know about the breaches,

12 without having received the respective documents from

13 the competent bodies. How could we know about the

14 breaches? From conversations?

15 Q. Also in paragraph 4 of your witness statement you claim

16 in relation to the inspection of KPM and TNG that the

17 companies were not given the opportunity to:

18 "... challenge the results or submit a plan to

19 remedy the [situation]."

20 However, the acts of inspection were served on the

21 companies, so they could have appealed the result within

22 three days, couldn't they?

23 A. Once again, I can explain. The acts themselves, with

24 the results of the inspections, are dated the 15 th. We

25 received the notices on the 16th. Normally when you

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11:36 1 conversation.

2 Q. So you bugged the telephone in order to record the call;

3 is that correct?

4 A. How can we bug a telephone conversation? I didn't make

5 any -- we recorded the telephone conversation. I said

6 it was not me who prepared the transcript. We recorded

7 the telephone conversation, we handed over the recording

8 to the lawyers, and they prepared the transcript.

9 Q. Is it your normal practice to record telephone calls?

10 A. No, it's not our normal practice. But since all this

11 happened on the 22nd, we knew about the notices of

12 21st July and we of course viewed this as a very

13 important question, and therefore we made a recording.

14 And I think it is quite a normal approach under the

15 circumstances.

16 Q. Did Mr Ongarbaev or Mr Utegaliev give you permission to

17 record the call?

18 A. Do I have to demand such permission? This is a normal

19 conference call; there were other people also present.

20 I don't think this information is confidential.

21 Q. I'm not sure you answered the question. You just said

22 it's not your normal practice to record telephone

23 conversations. Whether you thought it was necessary or

24 not, can you just answer my question, please: did you

25 ask Mr Ongarbaev or Mr Utegaliev for their permission to

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<p>11:38 1 record the call?</p> <p>2 A. No, we did not ask for such permission.</p> <p>3 Q. And equally, did you make them aware that the call was</p> <p>4 being recorded?</p> <p>5 A. No, we did not inform them that a recording was being</p> <p>6 made.</p> <p>7 Q. And did you ever share the contents of this transcript</p> <p>8 with Mr Ongarbaev or Mr Utegaliev, to ask them if they</p> <p>9 agreed with the contents?</p> <p>10 A. How could I share it if they were participants of this</p> <p>11 conversation? How can I share something in which they</p> <p>12 directly took part?</p> <p>13 Q. The question is very specific; please answer it.</p> <p>14 I asked you if you shared the contents of the transcript</p> <p>15 subsequent to the telephone conversation itself. Did</p> <p>16 you share the contents of the transcript with either of</p> <p>17 the two gentlemen I just mentioned?</p> <p>18 A. I have responded already that the transcript of this</p> <p>19 conversation was not prepared by me, it was not I who</p> <p>20 made it, therefore I couldn't share it.</p> <p>21 Q. Thank you. Let's move on to something else.</p> <p>22 In paragraph 9 of your witness statement you say</p> <p>23 that:</p> <p>24 "It was clear that the representatives were under</p> <p>25 instruction to quickly obtain the shareholders' approval</p> <p style="text-align: center;">Page 53</p>	<p>11:42 1 of proceedings, because we are aware of objections that</p> <p>2 might occur following this order, probably even</p> <p>3 arbitration proceedings, but meanwhile it is necessary</p> <p>4 to ensure operability of the field as a whole and of</p> <p>5 [the] facilities ..."</p> <p>6 The point is simple: there were other reasons stated</p> <p>7 for the need to proceed on a swift basis with the</p> <p>8 transfer; isn't that correct?</p> <p>9 A. I can't see any other reasons for a swift transfer.</p> <p>10 Since we are an oil company operating under</p> <p>11 international regulations and rules, we are fully aware</p> <p>12 what might be the outcome of closure of production.</p> <p>13 Therefore we always took measures in order to secure</p> <p>14 a gradual transfer, if one might say so, of the</p> <p>15 production cycle to avoid grave consequences,</p> <p>16 environmental, technological or social.</p> <p>17 And if Mr Ongarbaev refers to social duties, social</p> <p>18 commitments, I don't understand what he means, because</p> <p>19 we paid the salaries, wages, and we observed all our</p> <p>20 commitments in the social sphere. We maintained the</p> <p>21 production. None of the workers left the field.</p> <p>22 Everyone was operating as normally as one could under</p> <p>23 these complicated conditions, and we gave special</p> <p>24 directives, which can be confirmed by our technical</p> <p>25 staff, that we demanded them to keep the existing</p> <p style="text-align: center;">Page 55</p>
<p>11:40 1 to transfer the fields and property to trust management</p> <p>2 from KazMunaiGas, which would alleviate the consequences</p> <p>3 of the illegal termination of the contracts."</p> <p>4 Now, can I refer you to the transcript again at the</p> <p>5 top of page 2. Sorry, this is Exhibit C-190. Do you</p> <p>6 have that? You will see that the actual reason for</p> <p>7 a swift transfer was "to ensure operability of the</p> <p>8 field"; also to ensure production and to ensure that</p> <p>9 employees did not lose their jobs, as Mr Ongarbaev</p> <p>10 allegedly told you. Isn't that correct?</p> <p>11 A. I'm sorry, I'm not sure I understand the question. What</p> <p>12 is the question, sorry?</p> <p>13 Q. I am saying that there were other reasons for the swift</p> <p>14 transfer, which is as set out in the transcript.</p> <p>15 THE CHAIRMAN: Could you perhaps point out to the witness --</p> <p>16 it may be helpful -- where it is in the transcript you</p> <p>17 are referring to?</p> <p>18 MR TIRADO: It's the top of page 2, Exhibit C-190,</p> <p>19 Mr Ongarbaev, and I will read from the second sentence:</p> <p>20 "Accordingly, under the law, in order to ensure ..."</p> <p>21 Sorry, I just back up a little bit:</p> <p>22 "... also there are certain obligations to the</p> <p>23 region, social commitments to the employees, workers.</p> <p>24 Accordingly, under the law, in order to ensure</p> <p>25 continuity of production, not to stop it until the end</p> <p style="text-align: center;">Page 54</p>	<p>11:44 1 production schedule.</p> <p>2 So I don't see any problems here. This is normal</p> <p>3 international practice.</p> <p>4 Q. Okay. Can I also take you back again to Mr Ongarbaev's</p> <p>5 witness statement. At paragraph 4.2 of that statement</p> <p>6 he has said -- sorry, do you have that?</p> <p>7 A. Item 4.2, right?</p> <p>8 Q. Correct. At this paragraph Mr Ongarbaev says:</p> <p>9 "The transfer of the territories needed to take</p> <p>10 place swiftly in order to maintain the fields. A gas or</p> <p>11 oil field is not simply like a car in the sense that one</p> <p>12 cannot just [shut] it off and turn it back on again.</p> <p>13 Any period of ramping up or ramping down production</p> <p>14 (ie the production of hydrocarbons) may lead to</p> <p>15 deterioration of the underlying asset ... There was</p> <p>16 simply no scope to leave the fields unmanned for</p> <p>17 a lengthy period of time. It was therefore entirely</p> <p>18 appropriate to effect the transfer into trust management</p> <p>19 as soon as possible."</p> <p>20 Mr Calancea, do you agree that on this basis alone</p> <p>21 it was important to transfer the fields swiftly?</p> <p>22 A. I think in my previous answer I already supplied a reply</p> <p>23 to this question, and it was in fact an exhaustive</p> <p>24 reply. I have provided already an answer to this.</p> <p>25 A normal oil company working in international</p> <p style="text-align: center;">Page 56</p>

11:47 1 projects will never allow a situation to arise where our
 2 actions would cause damage or loss of an oilfield,
 3 therefore we gave instructions to our technical
 4 personnel to keep working. And moreover, we wrote
 5 letters from our company in which we asked the personnel
 6 under these conditions to enter -- subsequently to enter
 7 employment with the company which took over our fields.
 8 Q. Mr Calancea, please bear with me. Do you or do you not
 9 agree that this reason alone -- was my question -- is
 10 sufficient basis for the swift transfer of the fields?
 11 A. No, I don't agree. What do you mean, "swift transfer of
 12 the field"? It's not a rapid process. Any specialist
 13 will tell you that it's not possible to rapidly
 14 transfer, just to press a button, switch something off,
 15 and then switch it back on again. It's technically
 16 impossible.
 17 Q. Thank you.
 18 A. Leaving alone the legal issues.
 19 Q. Okay. You also refer to the terms of the trust
 20 management agreement themselves in paragraphs 10 and 11
 21 of your witness statement, don't you? In particular, in
 22 paragraph 11 you refer to the failure by the Republic to
 23 offer compensation, don't you?
 24 A. Yes, exactly so.
 25 Q. But as noted in paragraph 27 of the statement of claim,

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11:49 1 the claimants commenced this arbitration less than
 2 a week after the termination of KPM and TNG's contracts,
 3 didn't they?
 4 A. I have no knowledge of this.
 5 Q. Were you sat here yesterday?
 6 A. Yes, of course.
 7 Q. This came up several times in testimony yesterday. So
 8 are you saying that this is the first time that you are
 9 aware that arbitration began less than a week after
 10 termination?
 11 A. I know that the shareholders of KPM and TNG applied for
 12 arbitration. Maybe I didn't understand your question
 13 correctly.
 14 Q. The fact that the contract properties are subject to
 15 these proceedings is bound to make them less attractive
 16 to any new investor who might otherwise purchase
 17 a licence to exploit them; correct?
 18 THE INTERPRETER: Sorry, sir, could you repeat the question?
 19 Even from the transcript it's not quite clear.
 20 Q. The fact that the contract properties are subject to
 21 these proceedings is bound to make them less attractive
 22 to any new investor who might otherwise purchase
 23 a licence to exploit them?
 24 A. I'm sorry, I'm not sure I quite understood the question.
 25 Could you repeat it once again?

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11:51 1 Q. Sure. The fact that the contract properties are now
 2 subject to arbitration proceedings in itself is bound to
 3 make them less attractive to any new investor who might
 4 otherwise purchase a licence to exploit them; do you
 5 agree?
 6 A. Why does it make it less attractive? The investor
 7 doesn't buy a contract; he buys the assets present in
 8 the field at the time of the purchase. This is the
 9 asset, and nothing else.
 10 Q. Isn't it correct that the claimants have prejudiced
 11 their own ability to obtain compensation by making it
 12 less likely that a new subsoil user will be found to
 13 take on KPM and TNG's contract properties?
 14 MS ROEBUCK FREY: Sorry, again this sounds like a legal
 15 question.
 16 THE CHAIRMAN: Well, it's not a legal question, but it's
 17 also not a fact question for a witness of that kind.
 18 MR TIRADO: Fine. I think we've explored that far enough.
 19 Can we then move on, please, to a new topic. If
 20 I could ask you to look at Exhibit C-526. This exhibit
 21 is dated 12th April 2010, and it's KPMs/TNG's request
 22 for MOG approval of the transfer to Cliffson, which you
 23 co-signed; correct?
 24 A. Yes, I did sign it, I did sign this application.
 25 Q. There is an appendix called "Sheet of attendant

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11:54 1 documents"; can you see that?
 2 A. Yes, I see the appendix.
 3 Q. And does this sheet reflect the documents that you
 4 attached to the letter?
 5 A. If we have this list, it apparently reflects all the
 6 documents that we attached to this application, of
 7 course.
 8 Q. It is correct that there are numbered items 1 to 6 in
 9 regular print under each of the regular-printed
 10 sentences, and under each of the regular-printed
 11 sentences there are larger parts in italics; can you see
 12 that?
 13 A. Yes, of course.
 14 Q. Do you remember from where you got the regularly printed
 15 sentences? What's the source for the regularly printed
 16 wording?
 17 A. I don't know the source, because the appendices were
 18 prepared by the lawyer, referring to the different legal
 19 acts.
 20 Q. Sorry, were these written by your employees?
 21 A. Yes, of course. We had staff who were working with
 22 this, and I was also participating in this work.
 23 Q. So would you agree that this reflects what the
 24 government expects you to submit, and you knew that?
 25 A. This reflects what we actually handed over as attachment

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11:56 1 to this letter. I don't know what the government might
 2 have expected of us. But if this was prepared by the
 3 lawyers, I assume they knew all the legal requirements.
 4 But I don't know what the government actually expected
 5 of us.
 6 Q. Okay. Could I ask you to look at item 3, please, and in
 7 particular (a). And then could I ask you to please take
 8 a look at the italics part of item 3. Have you done
 9 that?
 10 A. (Not interpreted) Da.
 11 Q. Would you agree that this is in response to (a)?
 12 A. How can this be a response to item (a)? I have a list
 13 of documents that were submitted, in response to what?
 14 Some notarised copies of documents, for example. That's
 15 what we have here.
 16 Q. Yes. Well, you have in (a) a request for notarised
 17 copies of constituent documents. And then the note in
 18 italics is:
 19 "Notarised copies of constituent documents ..."
 20 So it's a response to 3(a), is it not?
 21 A. I'm sorry, I'm not sure I understand the question. We
 22 submitted a list of documents, and we have this list in
 23 front of us. In response to what requirements?
 24 Apparently if a list was prepared, it complied with the
 25 relevant legislation of the Republic. I'm not sure

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11:59 1 I understand the question. Could you reformulate it,
 2 please?
 3 Q. Maybe if I could ask you to look at (b) and (c) as well.
 4 And I ask you: do you see anything in the italics that
 5 responds to either (b) or (c)?
 6 A. Well, you know, in italics, as you pointed out, we have
 7 certain bullets, and these bullet points refer at the
 8 same time to (a), (b) and (c).
 9 Q. Yes. The point --
 10 A. If I understand correctly what you meant. So the bullet
 11 point and the italics corresponds to items (a), (b) and
 12 (c) here.
 13 Q. Correct. Okay. But just to try and summarise this, the
 14 wording in italics appears to respond to (a) only; would
 15 you agree?
 16 A. No, I don't agree with this. As I've mentioned already,
 17 this bullet point, what we have in italics here
 18 corresponds with items (a), (b) and (c). But if you
 19 wish to get a more precise answer, this is a legal
 20 question: then you have to turn to the lawyers.
 21 THE CHAIRMAN: I'm sorry, may I just follow up on that
 22 shortly.
 23 Mr Calancea, this is an appendix to a letter that
 24 you wrote. And I know you are not a lawyer, and you
 25 also explained that the lawyers were the ones who really

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12:01 1 set up what was to be submitted in the appendix.
 2 Nevertheless, since you signed the letter, obviously
 3 I take it that you saw the appendix?
 4 A. (Nods head)
 5 THE CHAIRMAN: What was your understanding of the difference
 6 between what we have in normal print in this, for
 7 instance point 3, and what in italics? Because you have
 8 that in basically every one of these sections. Did you
 9 have an understanding -- I mean, my personal impression
 10 right now is that the normal printing repeats what the
 11 law or some acts require, and then the italics say what
 12 they are submitting, and I think counsel calls for
 13 a response to that.
 14 Did you have an understanding of that distinction,
 15 or was this something you left to the lawyers?
 16 A. Thank you very much for this clarification. This is
 17 exactly how I understand it: if it is italics, then
 18 these are the documents which we submitted, in line with
 19 the non-italics items listed, (a), (b) and (c). So what
 20 we see in italics corresponds to the requirements in
 21 (a), (b) and (c).
 22 Is that how you expressed it? This is how I see it.
 23 THE CHAIRMAN: Thank you.
 24 MR HAIGH: Sorry to interrupt further, but I notice in the
 25 italics under 3 that it refers to:

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12:03 1 "... 81 sheets (all documents are with apostils and
 2 notarized translation into Russian)."
 3 Was there an 81-page attachment that's referred to
 4 in those italics?
 5 A. Well, in the text you see that the total -- in the text
 6 of the document you can see that the total amount of the
 7 appendices amounts to 81 pages. So all the documents,
 8 the copies of which were produced totally, amount to
 9 81 pages. This is what it means by italics.
 10 MR TIRADO: I'm grateful to the Tribunal for their
 11 intervention.
 12 In that case, Mr Calancea, would you agree that the
 13 application which was submitted was incomplete?
 14 A. You know, I cannot answer this question. But since our
 15 legal department was a competent legal department and
 16 knew what they were doing, I am sure that the list of
 17 documents they produced was a comprehensive list.
 18 Q. Okay, thank you.
 19 A. I cannot agree that this list was not complete.
 20 Q. Could I please ask you to take a look at Exhibit C-533.
 21 Is it correct that these documents were sent on
 22 23rd June 2010?
 23 A. Unfortunately my copy in Russian does not reflect the
 24 date properly. Maybe you have a better copy.
 25 I couldn't possibly answer this question. I am looking

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12:05 1 at the upper part of the document and I can't see the
 2 date.
 3 Q. The Russian shows the fax send date at the bottom.
 4 A. I am looking at the upper part of the document. The
 5 outgoing document number, every document coming out of
 6 the company had an outgoing number, and I cannot read
 7 the number or the date.
 8 Q. But if I can ask you to look at the bottom of the
 9 document, the fax transmission date is indeed
 10 23rd June 2010, is it not?
 11 A. I'm not sure that this is our signature. The outgoing
 12 document number is the number which is in the left top
 13 corner, and whatever is stated in the other part of the
 14 document, we had a register for the outgoing documents
 15 and this register is very strict. If you give me a copy
 16 which produces this portion of the document in the left
 17 top corner, I can answer your question.
 18 Q. This is a claimant document. Maybe it's easier if you
 19 turn the document upside down and you can see more
 20 clearly the fax transmission date at the bottom.
 21 Is it not clear?
 22 A. This is not enough, because the fax number can be
 23 modified, the date on the fax machine might be
 24 incorrect. What I am interested in is the outgoing
 25 document number; this is what interests me.

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12:07 1 Q. Well, what I'm interested in: is it correct that this is
 2 a cover letter setting out all the documents that were
 3 being sent on this date?
 4 A. So this letter says that there were some additional
 5 materials that had been requested from us, and they were
 6 produced. They had requested additional materials, and
 7 we prepared a list of such additional materials.
 8 Additional materials is an important clarification.
 9 So I assume they had asked for something in addition to
 10 what had earlier been produced, and this letter results
 11 out of such request.
 12 Q. So you acknowledge that documents were sent to the MOG
 13 before this letter was sent?
 14 A. I can only confirm that the ministry requested
 15 additional materials, and such additional materials were
 16 produced by us.
 17 Q. And if you look through that cover letter, can you find
 18 any documents regarding the solvency of Cliffson?
 19 A. First of all, I did not see the outgoing letter, the
 20 letter coming out of the ministry. It might be that the
 21 other documents were produced by the head company who
 22 directly communicated with the ministry. So it is quite
 23 possible that the head company produced some other
 24 documents to the ministry.
 25 Q. Mr Calancea, I'm asking about that letter.

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12:10 1 A. Could you please repeat the question then?
 2 Q. Yes. If you look through that cover letter, can you
 3 find any documents regarding the solvency of Cliffson?
 4 A. No, this list does not contain such documents which
 5 would specify anything about solvency of Cliffson.
 6 Q. Okay. So let's be clear then: even at the end of
 7 June 2010, you still had not provided a full
 8 application; correct?
 9 A. Just once again let me reiterate and explain that
 10 a complete application -- that is the documents which
 11 are to be produced or provided according to the full
 12 application -- I believe the concept of full application
 13 is something that is not in my knowledge. It is up to
 14 the lawyers of the company to judge whether
 15 an application is complete or not complete. I'm afraid
 16 I am not competent enough to answer this question or
 17 make such a judgment.
 18 Q. Thank you, Mr Calancea. If we could then move on to the
 19 final topic.
 20 You mention in paragraph 2 of your witness statement
 21 that the infrastructure of KPM and TNG was
 22 interconnected; correct?
 23 A. That's right. That's right, they were interconnected.
 24 Q. You also mention that since the beginning of 2010, TNG
 25 used its own funds to cover [KPM's] expenses. Is that

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12:13 1 correct?
 2 A. To some extent, yes. We used TNG's funds in order to
 3 cover the operational expenses of KPM, in particular
 4 paying salaries to the employees of KPM.
 5 Q. So it's correct to say as well, isn't it, that KPM's
 6 financial troubles had a direct impact on TNG as well?
 7 A. Financial problems of KPM? I don't know if KPM had
 8 financial problems; they had legal problems. The fact
 9 that their accounts were frozen and they could not
 10 operate, of course that had an effect on TNG.
 11 Q. And did you know that around the end of 2009 and the
 12 beginning of 2010, Ascom, as the sole shareholder in
 13 KPM, decided to have KPM pay out a dividend in the
 14 combined amount of some US\$72 million?
 15 A. Well, I am not familiar with the reporting of KPM. The
 16 accounting of KPM is something I am not familiar with.
 17 Q. So you didn't know that Ascom decided to have KPM pay
 18 out a dividend of US\$72 million?
 19 A. I was a director of TNG.
 20 Q. So I repeat my question. You didn't know -- yes or
 21 no -- whether Ascom decided to have KPM pay out
 22 a dividend in the combined amount of US\$72 million?
 23 A. I knew of such a decision. Yes, I knew.
 24 Q. And so would you agree that this aggravated KPMs
 25 financial problems?

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12:15 1 A. No, I cannot agree to that. I cannot agree that this
 2 has aggravated their problems.
 3 Q. Or would you agree that this also caused additional
 4 expenditure for TNG, since TNG was paying for KPMs
 5 expenses?
 6 A. Not exactly. Yes, there was certain expenditure,
 7 a certain burden, but this burden was not too much for
 8 TNG. We could afford to carry out payments for the
 9 purpose of paying salaries.
 10 Q. Just to be clear, are you saying that it did cause
 11 additional expenditure for TNG?
 12 A. Yes, it did increase expenditure of TNG, yes.
 13 Q. Thank you.
 14 It is correct, is it not, that at the end of 2009
 15 TNG agreed to extend the payment terms for their largest
 16 customers, Statoil Ltd and General Affinity?
 17 A. Yes, that's correct. We have agreed, we have prolonged,
 18 we have extended the terms.
 19 Q. We have the financial statements for Tristan Oil for
 20 2009 at Exhibit R-37.6. It's page F3.
 21 A. F3 or F113?
 22 Q. F3. Do you have that?
 23 A. Yes, I do.
 24 Q. There it says:
 25 "As described in Note 30(b), the management of
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12:20 1 paid by Statoil and General Affinity. Is that correct?
 2 A. I can read in the report that it was partially paid, and
 3 what this meant is not only two companies, TNG and KPM;
 4 frankly, I don't remember which part of it concerned
 5 TNG. But if you read in the report that a part of this
 6 debt was paid, then you have to look into note 34 and
 7 see more details about it.
 8 Q. I don't mean to labour the point, but again it's just
 9 asking you what you know, and whether you know whether
 10 this debt was ever paid.
 11 A. Well, if you had showed to me the amount attributable to
 12 TNG, I would probably -- I would recognise that amount.
 13 But since this is a combined report for two companies,
 14 the figure is not familiar to me. I am not familiar
 15 with this figure. So if you have a separate document
 16 for TNG, I may look at it.
 17 Q. Actually my next and last question is in relation to
 18 TNG, and it's this: did this not also cause some
 19 financial difficulties for TNG?
 20 A. I'm not sure that these amounts resulted in any
 21 financial difficulties for TNG because the amounts we
 22 were making and the production that we had was totally
 23 sufficient for the operational activities of the
 24 company. So to say that this resulted in any serious
 25 difficulties, I am not sure I can agree to that.
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12:18 1 Tolkyneftegaz LLP and Kazpolmunay LLP agreed to extend
 2 the payment terms for their largest customers,
 3 Statoil Ltd and General Affinity Ltd, which are related
 4 parties, after they were informed that these customers
 5 would not be able to comply with existing contractual
 6 payments terms. As at 31 December 2009, the amount owed
 7 by these customers was USD 162,052,356, however
 8 partially repaid subsequent to the balance sheet date in
 9 the amount of USD 18,700,000 as disclosed in
 10 Note 34(d)."
 11 Could you inform us whether this debt was ever
 12 actually paid by Statoil and General Affinity?
 13 A. Well, this is an auditors' report of KPMG and if the
 14 auditors say that the payment took place, then I believe
 15 that the payment did take place. But when it comes to
 16 the manner in which this payment was made, I don't know,
 17 probably it was some kind of settlement towards the
 18 third parties or setoff of some kind. I don't recall
 19 how this actually took place: whether it was paid to
 20 a bank account or it was settled in some other manner,
 21 or repaid in some other manner. But since this is the
 22 auditors' report, I have my full trust in KPMG auditors.
 23 Q. Sorry, my question specifically was to what you know.
 24 If I understand your testimony correctly -- and correct
 25 me if I'm wrong -- you are saying that this debt was
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12:22 1 Q. As I understand it, you acknowledge at least that it
 2 caused difficulties; whether they were serious or not
 3 may be a moot point. Is that correct?
 4 A. You know, if you allow me, I can explain you a few
 5 financial issues. When it comes to the debt --
 6 Q. No, I really don't --
 7 THE CHAIRMAN: I'm sorry, you asked him and now he is trying
 8 to say what difficulties he may have had or not. It's
 9 a bit difficult to now say we don't want to hear that.
 10 Do you want to rephrase your question?
 11 MR TIRADO: Well, I was just responding to what the witness
 12 had said. He seemed to acknowledge in his testimony
 13 that there were difficulties; I was just trying to get
 14 him to confirm that that was my correct understanding of
 15 his testimony, sir, whether one's differentiating
 16 whether that's a serious difficulty or otherwise. But
 17 it was just to confirm that he had accepted that this
 18 did cause difficulties for the company.
 19 THE CHAIRMAN: Well, then, if I understand it correctly, he
 20 started trying to explain what he could say to that
 21 question. So I suppose we let him go on.
 22 MR TIRADO: Okay, sir.
 23 A. The thing is we had certain loans from the company, from
 24 Tristan Oil, and these loans were subject to interest,
 25 and we were repaying the loans by the debt of
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12:24 1 General Affinity; that is, we would repay the loans, or

2 the interest of the loans, by taking other loans on

3 which we did not have interest. This was more

4 profitable for TNG. We had this kind of transactions

5 and you can see them reflected in the reports.

6 So in my opinion the repayment of the loans actually

7 improved the financial conditions of TNG because we no

8 longer had to pay interest to Tristan Oil. So this

9 improved our financial condition; we had a healthier

10 balance sheet.

11 Q. Thank you. I think that concludes the questioning,

12 except I would just like to address the document that

13 was presented to the witness at the beginning in direct.

14 This is Exhibit C-711. You may need to put that in

15 front of you to refresh your memory.

16 When you were asked to explain what this document

17 was, you described it, I believe, as an "excerpt from

18 ... electronic correspondence". Is that correct?

19 A. That's correct.

20 Q. Where is the rest of the correspondence?

21 A. Here we can see that there was an attachment,

22 an archived file in the size of 1 megabyte. So the rest

23 of the document is printed out.

24 Q. Could you inform the Tribunal when you first saw this

25 document?

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12:27 1 A. On 9th July. That's when I first saw this document, on

2 9th July.

3 Q. When did you inform your lawyers of this document?

4 A. The same date. This is the date when I informed our

5 lawyers. This is when I forwarded this document to our

6 lawyer, Mr Pisica: the same day, as soon as I received

7 this document. (Pause)

8 MR TIRADO: Thank you, Mr Calancea. No further questions.

9 THE CHAIRMAN: Thank you. Any questions in re-direct?

10 MS ROEBUCK FREY: No, thank you.

11 THE CHAIRMAN: My colleagues?

12 MR HAIGH: No, thank you.

13 THE CHAIRMAN: Alright, no questions from me. So that

14 concludes our examination of Mr Calancea. Thank you

15 very much for your patience.

16 We now we turn to the examination of the

17 respondent's witnesses, obviously. I suppose it might

18 be appropriate to now have the lunch break, if that's

19 okay. That gives us a new section then for the

20 afternoon.

21 Before we do that, I would be grateful if the

22 respondent or the parties could tell us in which order

23 the witnesses will be heard. I have the list in front

24 of me of all the respondent's witnesses which the

25 claimant has indicated it will want to hear. So perhaps

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12:29 1 you can give me an order.

2 DR NACIMIENTO: It's the following order: Minister Mynbaev

3 is the first one; Mr Kravchenko; Mr Suleimenov;

4 Mr Chagnoux; Mr Rakhimov; Mr Turganbayev; Mr Akhmetov.

5 THE CHAIRMAN: I don't see him on the list that we got from

6 the claimants, but it may be my mistake. So you say

7 number 7 is Mr Akhmetov.

8 DR NACIMIENTO: Then we have, via video-conferencing, Dr Kim

9 and we suggest that we hear him on the same day as

10 Mr S Rakhimov, also by video-conferencing.

11 THE CHAIRMAN: He can't be on the list, because he was

12 suggested later, I think.

13 DR NACIMIENTO: He was suggested last Friday, actually.

14 THE CHAIRMAN: Yes. And that's it?

15 DR NACIMIENTO: No. Mr Aubakirov.

16 THE CHAIRMAN: So these would be Monday, these two. Well,

17 it depends a little bit how far we get before the

18 weekend.

19 DR NACIMIENTO: That's right.

20 THE CHAIRMAN: So I will just keep counting the others for

21 the time being. We've finished with no. 7, Mr Akhmetov.

22 And the next one would be?

23 DR NACIMIENTO: Mr Aubakirov.

24 THE CHAIRMAN: Maybe my list is not really complete. What

25 I would suggest perhaps would be easier is if you would

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12:32 1 just kindly give us a list in the order on paper, and

2 then we don't have to look in all the papers and we are

3 all clear.

4 DR NACIMIENTO: That's fine.

5 THE CHAIRMAN: That can be done.

6 MR SMITH: Mr Chairman, just two clarifications. One is

7 I understand counsel is now inverting the order of

8 Mr Chagnoux and Mr Suleimenov from what we were notified

9 on September 27th. Is that correct? We were told that

10 Mr Chagnoux would go after Mr Kravchenko.

11 DR NACIMIENTO: That is probably correct. Mr Suleimenov is

12 here. Mr Chagnoux indicated that he is free tomorrow

13 morning, and that's the only reason. And Mr Suleimenov

14 is already here and present.

15 THE CHAIRMAN: So we will definitely start with Mr Mynbaev

16 after lunch?

17 DR NACIMIENTO: Yes, that's right.

18 MR SMITH: One other clarification, Mr Chairman, I'm sorry.

19 With respect to Mr S Rakhimov, the new witness, counsel

20 had been asked, I believe, at the opening session to

21 enquire into getting him a visa so that he could testify

22 here in person, given the nature of the allegations

23 contained in his statement. I'd like to have a report

24 on whether he can appear in person.

25 DR NACIMIENTO: You will appreciate that we received your

Page 76

12:33 1 letter on Friday afternoon, late evening Astana time.

2 Over the weekend we communicated with Mr S Rakhimov, and
 3 obviously as of Monday we were here in the hearing.
 4 I will ask again whether it is possible for him to come;
 5 I understand that it has been tried to do it. I also
 6 know from experience how difficult it was to arrange for
 7 the visa for everyone else, and we started this well in
 8 advance.

9 So I'm not sure it is possible to do it, and I'm not
 10 sure it is reasonable really to request this, given that
 11 we received it only as of the beginning of the hearing.

12 MR SMITH: We made the request as soon as we saw the new
 13 witness statement.

14 THE CHAIRMAN: That's true. All you can do is try.

15 DR NACIMIENTO: Exactly.

16 THE CHAIRMAN: Otherwise make sure that he's available on
 17 Monday.

18 So if you could perhaps, even over lunch, give us
 19 the short list of the witnesses, and then we are all
 20 clear in which order we go.

21 DR NACIMIENTO: I will do this.

22 THE CHAIRMAN: And the video-conference witnesses you can
 23 separately state, because it depends how far we get.

24 Alright. 1.30 is the time for us to meet again.
 25 Thank you.

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12:35 1 (12.35 pm)

2 (Adjourned until 1.30 pm)

3 (1.32 pm)

4 THE CHAIRMAN: We restart the hearing. We are going to hear
 5 first Mr Mynbaev.

6 MINISTER SAUAT MUKHAMETBAYEVICH MYNBAEV (called)
 7 (Evidence interpreted)

8 THE CHAIRMAN: As you may be aware, every witness is
 9 required to make a short declaration to us at the
 10 beginning of the testimony. I think you have a sheet of
 11 paper in front of you: if you would be kind enough to
 12 read that out to us.

13 THE WITNESS: Good afternoon. I am aware that in my
 14 testimony I have to tell the truth and nothing but the
 15 truth. I am also aware that if I do not comply with
 16 this obligation, I may face severe legal consequences.

17 THE CHAIRMAN: Thank you very much.
 18 Will you introduce the witness?

19 DR NACIMIENTO: Thank you, Chairman.
 20 (1.33 pm)

21 Direct examination by DR NACIMIENTO

22 Q. Minister, you submitted the witness statement in this
 23 arbitration. Is there anything that you would like to
 24 add or amend in this regard?
 25 A. No.

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13:33 1 Q. Do you confirm the witness statement?

2 A. Yes, I do.

3 Q. Could you please describe briefly your education and
 4 your professional background?

5 A. In 1985 I graduated from the Moscow State University
 6 majoring in economic cybernetics, and in 1988 I also made a PhD
 7 Study, so defended my thesis. In 1989 I worked as
 8 a teacher of the Institute of Economy in Almaty.

9 After that, I was the first deputy of
 10 [Kazkommertsbank] until 1995, and in 1995 I was invited
 11 to take the position of the Deputy Minister of Finance,
 12 and until 1998 I worked as the Deputy Minister of
 13 Finance and the head of the Treasury at the Ministry of
 14 Finance.

15 In 1998 I was appointed the Minister of Finance, and
 16 in 1999 I was appointed Minister of Agriculture. In
 17 2001 I was appointed the chairman of the State Bank of
 18 Development. And after that I took one-and-a-half-year
 19 break and worked in commercial business related to
 20 banking.

21 In 2003 I was invited to take the position of the
 22 Deputy Prime Minister in the government, and in 2005
 23 I was appointed Minister of Industry and Trade of
 24 Kazakhstan. In 2007 I became head of the national
 25 holding company -- pardon me, 2006 -- called Samruk, and

Page 79

13:36 1 in the autumn of 2007 I became Minister of Mineral
 2 Resources and Energy.

3 In 2010 I was appointed Minister of Oil and Gas, and
 4 this is the position I have been holding until this
 5 date.

6 Thank you.

7 Q. Thank you. Could you describe the functions of the
 8 Ministry of Oil and Gas and your function as the
 9 minister?

10 A. When it comes to the functions of the ministry:
 11 execution of the state policy and interdepartmental
 12 coordination of the work in the field of oil and gasoil
 13 chemistry, transportation -- transportation of oil and
 14 gas, the matters of petrochemical industry and
 15 hydrocarbonate resources, subsoil use and other related
 16 matters connected to these main functions.

17 As for my role of the minister, it's quite clear
 18 that authority of the minister in principle, it's
 19 a person who is responsible for all the actual matters
 20 related to the functions of the ministry and all the
 21 daily operations or the daily issues which may arise in
 22 relation to the field of the ministerial authority, yes.

23 Q. Thank you.

24 I have one question regarding an allegation raised
 25 by claimant in this arbitration, and that relates to the

Page 80

13:38 1 new Law on Subsoil Use. The claimants allege that

2 Kazakhstan enacted that law at a convenient time so as

3 to be able to terminate claimants' contracts easier.

4 In this context, could you describing the process

5 for enacting laws in Kazakhstan, in particular the usual

6 duration in general, and also in this specific case?

7 A. In principle, every department or every ministry,

8 whenever it intends to either amend the existing

9 legislation or bring to life a new law, it formalises

10 its suggestions in a certain way. Within the Ministry

11 of Justice of Kazakhstan there is an interdepartmental

12 commission for legislative work, and this commission

13 decides whether a proposal, one or the other proposal of

14 the ministry will be acceptable.

15 So the Commission collects all the proposals from

16 various agencies --

17 THE CHAIRMAN: Sorry, somehow I don't get the translation.

18 THE INTERPRETER: I'm very sorry for that. Which is the

19 last portion of translation which you did hear, sir?

20 I can see the script. Just a second, sir. You

21 haven't missed anything, sir.

22 "So the Commission collects all the proposals from

23 various agencies --"

24 I reminded the witness his last words, which are on

25 the transcript, sir.

Page 81

13:40 1 A. And having collected these proposals, the Commission

2 makes a proposal for the plan of legislative work for

3 the following year.

4 DR NACIMIENTO: I think part of it was not translated. It's

5 on the transcript, but it's not translated for everyone

6 to hear. Should we read it again?

7 THE INTERPRETER: Excuse me. Do you mean that the court

8 reporter heard it, but not the ... ?

9 THE CHAIRMAN: Yes, that seems to be the case. Somehow we

10 have to -- if it is on the record, maybe we can leave it

11 at that.

12 DR NACIMIENTO: It seems to me to be on the record, but

13 I haven't heard it.

14 THE INTERPRETER: Would you like me to read the transcript?

15 DR NACIMIENTO: Yes, please.

16 THE CHAIRMAN: Well, we have the transcript ourselves,

17 obviously. It's really in your hands. If you want the

18 testimony to start again on this point, you may. It's

19 in your hands.

20 DR NACIMIENTO: It's really just a very small bit, and it's

21 just the beginning. I think we can continue, and if

22 I may just ask the interpreter to remind the minister of

23 the last sentences.

24 THE INTERPRETER: Sure. I will start with the sentence:

25 "Within the Ministry of Justice Of Kazakhstan ... "

Page 82

13:42 1 A. So having collected such proposals from various

2 ministries, such commission makes a plan for legislative

3 work for the following year. After that, this plan,

4 this draft plan will be reviewed by the government, and

5 at a meeting of the government the members will vote.

6 And if they don't have any comments, if the members of

7 the government have no comments, then the draft plan

8 will be confirmed for the legislative work for the

9 following year.

10 After confirming such legislative work plan, each

11 ministry is responsible for its own interdepartmental

12 cooperation to confirm the drafts of the legislative

13 acts and bring in the final version to the Parliament,

14 and the ministry reports on this kind of preparatory

15 work some one or two times a month.

16 Besides, the Parliament also has the right to

17 initiate legislative acts. Further on, when it comes to

18 the time it takes for discussing one or the other

19 proposal, bill, it depends really on the nature of such

20 bill: some of them take a short time; some of them are

21 very complex and take a longer time to discuss.

22 In particular the bill that we are speaking about,

23 subsoil use, unfortunately it took not so short time to

24 discuss. I believe it took a bit longer than one and

25 a half years to discuss this bill.

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13:44 1 Q. Thank you.

2 I have another question again relating to

3 an allegation raised by claimants in this arbitration,

4 and it relates to Kazakhstan's general attitude towards

5 foreign investors.

6 Could you describe generally the investment climate

7 in Kazakhstan?

8 A. When it comes to the oil and gas sector, it's a rather

9 complex sector, and naturally the Republic is interested

10 in investments and technologies, in organisational

11 skills which accompany such foreign investments.

12 For this particular reason, when it comes to the oil

13 production, the share of the national companies is

14 approximately 25%. In the other 75% of cases, a larger

15 share belongs to the foreign investments, the majority

16 is foreign investment.

17 I can just name a few companies who are working

18 currently in the oil and gas sector in Kazakhstan:

19 ExxonMobil, Chevron, ConocoPhillips. These are the USA

20 companies. When it comes to European companies, we have

21 Shell, Total, Eni, M@rsk. When it comes to other

22 companies, there is, for example, national Korean

23 company; CNPC, the national Chinese company; national

24 company of India; and entering is the national company

25 of Malaysia.

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13:46 1 I could go on stating the names, such as Statoil.

2 Statoil is at the stage of signing: they are soon to

3 sign a contract concerning Abay block.

4 And for this reason, the oil and gas sector without

5 such companies wouldn't be able to exist.

6 DR NACIMIENTO: Thank you. I have no further questions.

7 THE CHAIRMAN: Alright. We come to cross-examination.

8 MR SMITH: We have witness binders, Mr Chairman, that we

9 will hand to the witness and to the Tribunal.

10 (1.46 pm)

11 Cross-examination by MR SMITH

12 Q. Minister Mynbaev, good afternoon.

13 A. Good afternoon.

14 Q. A few preliminary questions. Do you read English?

15 A. Not very well.

16 Q. Let me ask: you have before you a binder, I think there

17 is a clip, and we will be moving back and forth within

18 the binder. But I will ask that you look at the last

19 exhibit in the binder, which is tab 20 in the binder.

20 THE CHAIRMAN: Whenever you refer to a tab, mention the

21 exhibit number nevertheless for the record.

22 MR SMITH: I will. It's Exhibit C-8, for the record.

23 Minister, when did you first become aware of

24 President Voronin's letter to President Nazarbayev?

25 A. I don't recall the exact date.

Page 85

13:49 1 Q. Did you become aware of the letter shortly after it was

2 sent to President Nazarbayev in October 2008?

3 A. The letter was not addressed to the Ministry of Energy

4 and Natural Resources.

5 Q. I understand that, Mr Minister. Thank you. But that

6 doesn't answer my question. My question was: did you

7 become aware of the letter soon after it was sent to

8 President Nazarbayev in October 2008?

9 A. I believe not.

10 Q. As the Minister of Energy and Natural Resources, you

11 would agree, would you not, that in October 2008 the

12 operations of both Tolkynneftegaz and [KPM] were under

13 your authority as Minister of Energy?

14 A. That's correct.

15 Q. Okay. At tab 20 (C-8) there is a Russian translation.

16 It appears behind the English translation; it's the

17 third page behind the tab. This is the letter from

18 President Voronin to President Nazarbayev with a cover

19 note from President Nazarbayev. Do you see that?

20 A. Yes, I do.

21 Q. And you will see that President Nazarbayev, in response

22 to President Voronin's letter, indicates:

23 "Based on the petition of [the] Moldovan side,

24 thoroughly check company's activities and determine its

25 further operations in the best interest of the country."

Page 86

13:51 1 Do you see that?

2 A. Yes, I do.

3 Q. And there are two gentlemen that are listed above as

4 this note being to the attention of. Can you identify

5 those gentlemen?

6 A. Mr Sukeev and Mr Kalmurzaev.

7 Q. And who is Mr Sukeev?

8 A. Mr Sukeev is the Deputy Prime Minister and Mr Kalmurzaev

9 was at that moment head of the financial police.

10 Q. To whom did you report as, at the time, Minister of

11 Energy and Natural Resources?

12 A. The matters of oil and gas sector belong directly to the

13 Prime Minister's authority.

14 Q. And is it your testimony, Minister Mynbaev, that you

15 were not made aware by President Nazarbayev of his

16 directive to the first Deputy Prime Minister and the

17 head of the financial police to look into the operations

18 of Anatolie Stati in the energy sector in Kazakhstan?

19 A. You have asked me how soon I have learnt. I have learnt

20 some time after, but I do not recall the date. But it

21 is certain that I did not learn about it immediately.

22 Q. Why are you certain about that?

23 A. Because I learnt at the moment when the inspections of

24 the financial police were carried out.

25 Q. Do you find it unusual, Mr Minister, based on your

Page 87

13:54 1 experience as head of the energy sector on behalf of the

2 Government of Kazakhstan, that an enquiry from the

3 President of Moldova regarding the operations of

4 a foreign investor in the country of Kazakhstan in the

5 energy sector would not be sent to your attention, but

6 would rather be sent to the attention of the First

7 Deputy Prime Minister and the head of the financial

8 police?

9 A. I have difficulties commenting on this action of the

10 head of the state. But this instruction was not

11 addressed to me.

12 Q. Do you see in paragraph 2.2 of your witness statement

13 you indicate that, "The [Ministry of Gas] has the

14 following main tasks ..."? Do you see that?

15 A. I have opened 2.2.

16 Q. And I asked you: in paragraph 2.2, do you see that you

17 indicate in your statement that, "The [Ministry of Gas]

18 has the following main tasks..."? Do you see that?

19 A. Yes, I do see this.

20 Q. And do you see in 2.2(b) of that paragraph that among

21 the main tasks of the Ministry of Gas is:

22 "(b) supervision of inter-industry coordination in

23 the fields of oil and gas, petrochemical industries,

24 transportation of hydrocarbons and main pipeline

25 transport ..."

Page 88

13:56 1 A. Yes, I see. However, the ministry in most cases is not
 2 involved in investigations of the financial police,
 3 especially criminal investigations.
 4 Q. I appreciate that. My question really had nothing to do
 5 with the financial police.
 6 My question was: would you agree that among the main
 7 tasks of the Ministry of Gas -- at the time, the MEMR --
 8 is the supervision of inter-industry coordination in the
 9 field of main pipeline transport?
 10 A. That's correct.
 11 Q. What is a main pipeline?
 12 A. I may be mistaken if I'm not precise in my definition,
 13 but the definition has a contractual territory, the
 14 points of collection or gathering. There is a technical
 15 definition of this term, and it's purely technical. And
 16 since I am not a technical expert myself, I normally
 17 trust to the colleagues of the ministry, I rely on their
 18 opinion on this matter.
 19 Q. So in your capacity as Minister of Energy in Kazakhstan,
 20 your view is that whether a pipeline is or is not a main
 21 pipeline is a question of purely technical definition?
 22 A. In my opinion, yes.
 23 Q. You would agree with me, would you not, that your
 24 ministry was responsible for the licensing of main
 25 pipelines in Kazakhstan in the oil and gas sector, until

Page 89

13:58 1 the law was changed in 2007 to reassign that
 2 responsibility for the Agency for Regulation, I believe,
 3 of Natural Monopolies?
 4 A. I came to the Ministry of Energy and Mineral Resources
 5 already after this resolution. And during my time at
 6 the ministry, the ministry did not issue licences for
 7 main or other pipelines.
 8 Q. Right. But you understand, do you not, Mr Minister,
 9 that prior to your arrival in August 2007, the Ministry
 10 of Energy and Natural Resources did have responsibility
 11 for the licensure of main pipelines?
 12 A. Historically, yes. The thing is, when functions are
 13 forwarded or handed over from one ministry to another,
 14 these functions are forwarded together with accompanying
 15 people and the documentation. So the Ministry of Energy
 16 did not have anything connected to the licensing of main
 17 pipelines left at the moment when I came into the
 18 ministry.
 19 Q. Thank you. Would you agree with me, Mr Minister, that
 20 during the time period when the Ministry of Energy and
 21 Natural Resources had responsibility for the licensure
 22 of main pipelines, that ministry was competent to
 23 identify whether or not a pipeline was in fact main or
 24 not?
 25 A. If these functions belonged to the ministry, yes.

Page 90

14:00 1 Q. And you would also agree with me, would you not, that
 2 oil and gas operators operating in Kazakhstan are
 3 entitled to rely on the accuracy of the information
 4 provided to them by the Ministry of Energy and Natural
 5 Resources on whether or not they are required to obtain
 6 a main pipeline licence?
 7 A. Until 2007, I believe, yes.
 8 Q. And you would further agree with me, would you not,
 9 Mr Minister, that if the Ministry of Energy and Natural
 10 Resources, through the routine inspection of oil and gas
 11 operators in the country, identified a main pipeline
 12 that required a main pipeline licence, they were under
 13 a duty to inform the operator of the need for that
 14 licence?
 15 A. I believe that the request or application for a licence
 16 is something that the operator or the owner of the
 17 facility has to submit, as the ministry may not control
 18 all the facilities of industrial use all over the
 19 territory of Kazakhstan; the ministry does not have
 20 resources, does not have the staff that would allow such
 21 inspections. However, whether the operator himself
 22 approached or not, this is something that lies within
 23 the liability of the operator.
 24 Q. Thank you, Mr Minister. My question was a little
 25 different, but that's helpful.

Page 91

14:02 1 My question to you is: if, in the course of routine
 2 inspections of oil and gas operators, the ministry
 3 determines that an operator has a pipeline which is in
 4 need of a main pipeline licence for operation, you would
 5 agree with me, would you not, that the ministry should
 6 notify the operator of the need for that licence?
 7 A. If the ministry inspected and revealed such a fact, of
 8 course the ministry must notify.
 9 Q. If the Ministry of Energy and Natural Resources, through
 10 its routine inspections of an oil and gas operator --
 11 again, the premise of the question is that it identifies
 12 a pipeline that requires a main pipeline licence. Would
 13 the ministry be, in your view, under any duty to note
 14 the absence of such a main pipeline licence in its
 15 inspection report?
 16 A. This supposes that the ministry inspected this
 17 particular issue. Subsoil use is quite complex industry. If to list all
 18 the aspects, they are Kazakh content,
 19 educational matters, subsoil use of the
 20 country: there is a large list of the issues.
 21 If it [the ministry] inspected the status of main pipelines,
 22 and revealed that the operator does not have such a license, it
 23 would reflect it in the report. But it might be
 24 that the inspection did not aim at verifying the particular question
 25 of main pipeline .
 Q. Thank you.

Page 92

14:05 1 You testified a moment ago, as I recall, that you

2 agreed with me that in 2007 the responsibility for

3 licensure of main pipelines was moved from the Ministry

4 of Energy and Natural Resources to the Agency for

5 Regulation of Natural Monopolies; correct?

6 A. Yes.

7 Q. So would it be fair, Mr Minister, to conclude from that

8 that, following 2007, the Ministry of Energy and Natural

9 Resources did not have the competency within its

10 inspection teams of individuals who could identify

11 whether an operator operated a main pipeline, since it

12 no longer had responsibility for that function?

13 A. That's correct; they didn't have it.

14 Q. So if a pipeline inspection report prepared by the

15 Ministry of Energy and Natural Resources in 2008 or

16 thereafter notes that an oil and gas operator does not

17 have a main pipeline licence, you would find that highly

18 unusual, since that is not within the competency of the

19 ministry?

20 DR NACIMIENTO: I'm sorry, counsel. All this line of

21 questioning goes to some routine inspections where the

22 minister certainly in his function is not involved, and

23 it's the kind of detail --

24 MR SMITH: Madam, you're entitled to re-direct this witness

25 and not guide the witness.

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14:07 1 DR NACIMIENTO: Yes, I'm objecting to this line of

2 questioning. That's a kind of detail the minister does

3 not have to know: it's routine inspections.

4 MR SMITH: He's had no difficulty answering these questions,

5 counsel, no difficulty at all.

6 THE CHAIRMAN: Let me just interfere. I think the question

7 is in order. The decision-making process in the

8 ministry has been discussed from the very beginning, and

9 that is now qualified. So I see no problem with that.

10 MR SMITH: Mr Minister, let me go back to my question.

11 You would agree with me, would you not, that after

12 2007, when the responsibility for licensure of main

13 pipelines moved from your ministry to the Agency for the

14 Regulation of Natural Monopolies, the ministry would

15 have no competency, as part of its routine inspections,

16 to make any notation one way or the other as to whether

17 an oil and gas operator possessed or did not possess

18 a main pipeline licence; correct?

19 A. The fact is that when you referred me to paragraph 2.2

20 of my witness statement concerning the authority of the

21 ministry, it describes the function of coordination.

22 The ministry as a whole follows up for each subsoil user

23 to what extent they comply with their contractual

24 obligations, and if another agency discovers this or

25 that violation within its own scope of competence, then

Page 94

14:08 1 the ministry may and even has the duty to note this

2 breach.

3 Q. Thank you. Let me ask you a different question.

4 Minister, if an oil and gas operator in Kazakhstan

5 today wants guidance from the Government of Kazakhstan

6 as to whether it's required to obtain a main pipeline

7 licence to operate a pipeline, to whom should it direct

8 that question?

9 A. I'm not sure I understood. When you speak about the

10 "operator", what do you mean?

11 Q. Let me be more specific. If my client, TNG and KPM, had

12 had a question in 2008 or thereafter as to whether it

13 was required to obtain a main pipeline licence to

14 operate a pipeline, to whom within the Government of

15 Kazakhstan should it have addressed its enquiry?

16 A. To the Agency for Regulation of Natural Monopolies.

17 Q. And, Mr Minister, if the Agency for Regulation of

18 Natural Monopolies has provided a sworn statement in

19 connection with this arbitration that it is incompetent

20 to determine whether a pipeline is or is not a main

21 pipeline, would you find that surprising?

22 A. Well, apparently it would be surprising. I don't know

23 what they actually replied, what the Agency for

24 Regulation of Natural Monopolies replied.

25 Q. Let's move on.

Page 95

14:10 1 You are aware, are you not, Mr Minister, that the

2 Ministry for Energy and Natural Resources conducted

3 frequent inspections of the oil and gas operations of

4 both of my clients' companies, KPM and TNG; correct?

5 A. I don't think so. In my view these were planned

6 inspections or routine inspections. And if you mean

7 that during 2010 there were two inspections, well, there

8 was a special case then.

9 Q. Thank you, Mr Mynbaev. I was probably imprecise. My

10 question was: you would confirm, would you not, that my

11 clients' operations in Kazakhstan were subject to

12 frequent routine inspections in the ordinary course of

13 business?

14 A. I don't think so. Until 2010, one can probably check

15 the relevant statistics, but I don't think so.

16 Q. Is it your understanding, as minister, that oil and gas

17 operators are not subject to routine inspections by your

18 agency?

19 A. Maybe I didn't quite understand your question. Why are

20 they not subject? Of course there is a time schedule

21 for regular inspections. These may be different for

22 different companies because the companies are different,

23 they have different sizes, they find themselves in

24 different situations in a given region.

25 Q. Thank you. I was simply seeking your confirmation, if

Page 96

14:12 1 you know, that my clients' companies were subject to

2 routine inspections by the ministry. Do you know one

3 way or the other?

4 A. I can confirm that in January 2010 I believe there was

5 a planned inspection.

6 Q. Is it your testimony, Minister, that prior to the

7 planned inspection in January 2010 you're simply not

8 aware of whether KPM and TNG were subject to inspections

9 by the ministry?

10 A. I have no such knowledge.

11 Q. Look, if you would, at Exhibit C-86. It's tab 5 in your

12 binder. And I apologise, it's in a landscape format,

13 I believe. That may only be the English: the Russian is

14 actually in a portrait format.

15 Do you have that before you, sir?

16 A. Yes, I can see it.

17 Q. This is an inspection report of the company KPM dated

18 November 2008.

19 Am I correct in understanding that you've not seen

20 this report before today, to the best of your

21 recollection?

22 A. That's correct.

23 Q. You are aware, are you not, that in response to

24 President Nazarbayev's directive to thoroughly look into

25 the operations of Mr Stati in Kazakhstan, your agency,

Page 97

14:15 1 under your leadership, was in fact instructed to inspect

2 my clients' compliance with their subsoil use contract

3 obligations?

4 A. Unfortunately I don't remember any special,

5 extraordinary inspection measures on the part of the

6 ministry. But one may say that I personally was

7 probably aware of the substance of this some time from

8 the autumn of 2009.

9 Q. Is it your testimony, Minister, that you were not made

10 aware that the President of Kazakhstan had ordered the

11 Prime Minister of Kazakhstan and the financial police to

12 conduct an investigation of a foreign investor in the

13 energy sector until one year after that investigation

14 was ordered?

15 A. Probably I learnt about that a bit earlier. But if

16 something was being carried out in a routine order, it

17 was mostly inspections carried out by the financial

18 police, as I understand.

19 Q. Is it unusual, Minister, for the President of Kazakhstan

20 to direct the financial police to inspect energy

21 companies?

22 A. This happens not often, I would say.

23 Q. It was pretty extraordinary, wasn't it?

24 A. I think I would agree that this is quite a rare

25 situation.

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14:18 1 Q. And, Minister, is it even made rarer by the fact that

2 you don't recall being notified by President Nazarbayev

3 that he had received a letter from the President of

4 Moldova to look into the operations of an oil and gas

5 company in your sector?

6 A. Well, you know, the investigation was being carried out

7 by the financial police, and we learnt from the

8 financial police that such examination of the subsoil

9 users was being carried out. And to the extent that the

10 personnel of the ministry might be involved, I assume

11 that within their area of competence they were actually

12 involved. But any special steps on the part of the

13 ministry as a whole, or minister personally, were not

14 taken.

15 Q. You would agree with me, would you not, that President

16 Nazarbayev is very hands-on when it comes to the

17 operations of foreign investors in the oil and gas

18 sector?

19 A. Yes, of course, when it comes to major projects.

20 Q. Are you familiar with a Professor Olcott?

21 A. I know that this was somehow used -- probably this is

22 an expert. Well, something like this, I don't know any

23 details.

24 Q. Do you understand that Professor Olcott, who is

25 associated with the Carnegie Institute in Kazakhstan,

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14:20 1 has been retained by the Government of Kazakhstan as

2 an expert in this matter?

3 A. Yes.

4 Q. In connection with her report at [paragraph] 25 -- and

5 this was actually put on the screen for everyone in this

6 room in the opening presentations -- Professor Olcott

7 has said that:

8 "... President Nazarbayev has grown weaker over time

9 ... and ... has himself grown older and less interested

10 in managing the daily events in an increasingly more

11 complex country."

12 That's the position of the respondent in this case.

13 Do you agree that President Nazarbayev has grown

14 weaker over time, and he has grown older and less

15 interested in managing the daily events in Kazakhstan?

16 A. He is of course getting older. And as to what extent he

17 is interested in the daily events, it's difficult for me

18 to judge. But it's not only the head of state; even

19 myself, a minister, work concurrently with several major

20 projects, such as Karachganak, Kashagan, and these

21 require a lot of time. I spend much time in Europe, in

22 London. And to expect that one should know all the

23 details of smaller companies would be probably not

24 justified. I can't say I know everything in the daily

25 work of my sector at my level.

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14:22 1 Q. But you would agree with me, Minister, would you not,
2 that President Nazarbayev seems to have taken a specific
3 interest in my clients' operations in Kazakhstan?
4 A. Well, in general I don't think so. The instruction that
5 I saw afterwards was the instruction to examine the
6 case, to look into the situation, and apparently if
7 this -- if the head of another state approaches the
8 President of Kazakhstan, one can't leave such a letter
9 without consequence.
10 Q. But you know, do you not, Mr Minister, that in fact
11 President Nazarbayev asked President Voronin to write
12 him the letter that we looked at, which is [tab 20,
13 C-8], the first letter we looked at?
14 A. Well, this would be really saying too much. I don't
15 believe this at all.
16 Q. You don't believe it. Do you have any evidence that
17 President Nazarbayev did not request President Voronin
18 to write him the letter?
19 A. Of course I don't have any evidence. But in my view
20 this is a totally inadequate supposition, that one
21 should ask the head of another country to write a letter
22 to oneself requesting investigation of a specific
23 company. This is an inadequate supposition.
24 Q. Minister, have you been informed or are you aware that
25 President Voronin has in fact stated that he was

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14:25 1 requested by President Nazarbayev to write the letter
2 regarding Mr Stati's operations?
3 A. No, I don't know this.
4 Q. Okay. Let me show you -- and this is, I apologise, not
5 in your hearing bundle -- but it's Exhibit C-9. I am
6 providing the witness with a Russian version. (Handed)
7 My question to you, Mr Minister -- take as much time
8 as you would like to review the document -- is: is this
9 not evidence that in October 2008 you were written
10 directly by the financial police indicating that your
11 ministry should investigate the operations of Mr Stati's
12 companies in Kazakhstan, pursuant to an order issued by
13 the Deputy Prime Minister numbered 6497 of
14 16th October 2008?
15 A. I hadn't seen this letter. Now I see that, it says
16 literally the following:
17 "In case companies relating to Mr Stati are
18 identified, please provide the following information... "
19 Virtually every day there are dozens of letters of
20 this kind arriving, not only from the financial police
21 but from other agencies.
22 So I think this letter was redirected to a specific
23 department, to a relevant department, and the department
24 looked into this, and whether they found or not found
25 something. I think this is quite a common letter,

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14:27 1 ordinary letter: there are dozens of such letters
2 arriving addressed to the minister or deputy ministers
3 every day.
4 Q. So it's your testimony -- so the record is clear -- that
5 it's virtually an everyday occurrence that the Deputy
6 Prime Minister of Kazakhstan directs the financial
7 police to look into oil and gas operators in your
8 country?
9 A. I said that dozens of letters from all the agencies, not
10 necessarily from the financial police. Something may be
11 requested from the Ministry of Labour. The Ministry of
12 Economy may ask something else: for example, to submit
13 balances for the next year. Obviously such letters are
14 directed to the relevant department.
15 It is a routine letter which is registered at the
16 ministry, as any other agency has to reply to this.
17 There must have been a reply to this letter; I don't
18 know what it was. I haven't seen it.
19 Q. How often does your ministry get orders from the Deputy
20 Prime Minister directing the financial police to look
21 into foreign investors in your country?
22 A. Not often, I think. But that letter from the Deputy
23 Prime Minister to the Ministry of Oil and Gas, of
24 a different content, arrive virtually every day.
25 Q. The letter you have before you, Mr Minister, indicates

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14:29 1 that there is an order no. 6497 from the Deputy Prime
2 Minister; do you see that? It's in the first sentence.
3 A. Yes, I see it.
4 Q. Do you recall seeing that order from the Deputy Prime
5 Minister?
6 A. No.
7 Q. Do you know why the respondent has not produced that
8 order in connection with this arbitration?
9 A. I don't know.
10 Q. Thank you for that. We'll move on.
11 Look back, if you would, at tab 5 in your witness
12 binder. This again is Exhibit C-86. I'll ask
13 specifically in your original Russian version at
14 page 32, if you would take a look at that. It's under
15 the heading VIII, "Additional Information".
16 A. Yes, I see.
17 Q. Just take a moment and read the two paragraphs to
18 yourself that appear there. (Pause)
19 A. I've read it.
20 Q. Again, this document is an inspection report prepared by
21 your ministry. The first paragraph indicates that
22 according to the reply -- it doesn't indicate who made
23 the enquiry -- of the Agency on Regulation of Natural
24 Monopolies, KPM and TNG -- my clients' companies -- own
25 certain kinds of licences for their activities. And

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14:32 1 then in the second paragraph it says:
 2 "The above-stated licences, issued to these legal
 3 entities by the Department of Energy and Mineral
 4 Resources of the Republic of Kazakhstan, do not give
 5 them the right to use the main gas pipelines, oil
 6 pipelines and oil-products pipelines."
 7 Do you see that?
 8 A. Yes, I see these lines. But in my opinion, whether
 9 intentionally or not, I believe you are manipulating
 10 them; you are distorting the information a bit. Here
 11 they say the two companies have the licences for the
 12 activities, and here you took a pause. But I have to
 13 list the activities as they are stated in this document,
 14 and these activities are listed in the ...
 15 THE INTERPRETER: The witness is reading the list of
 16 activities from the document. Just a second, sir.
 17 I will quote from the English translation to keep you on
 18 the same page.
 19 A. And here you see that in the list of the activities
 20 there is a difference between main pipelines and the
 21 regular or simple pipelines. I don't know who is the
 22 person who drafted -- the person who drafted this
 23 document must have drawn the line between main pipelines
 24 and just pipelines. This is the first time I've seen
 25 this document, but I immediately make the difference

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14:34 1 between these two: main pipelines and just pipelines.
 2 Q. Thank you, Minister. It was not a distinction that was
 3 lost on our clients either.
 4 Let me ask you this question: do you know whether
 5 your ministry, at any point prior to Exhibit C-86, in
 6 its routine inspections of my clients' companies, ever
 7 made a similar notation of the absence of a main
 8 pipeline licence?
 9 A. Unfortunately I do not know. As I already said, the
 10 minister does not always read the acts on all the
 11 inspections, because the number of contracts in the
 12 field of oil and gas today is 204. So I physically am
 13 unable to do it all, and I am dealing with several large
 14 projects, whereas other officials of the ministry work
 15 with other issues according to the duties allocated to
 16 them.
 17 Q. I appreciate that, Minister, and I am not expecting that
 18 you read every inspection report of an oil and gas
 19 operator.
 20 I do have a question, though, which is: in
 21 November 2008, this was well after the Ministry of
 22 Energy and Natural Resources had responsibility for
 23 licensing of main pipelines. I believe I heard you
 24 testify earlier that there was not competency within
 25 your ministry as of 2008 to determine whether or not

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14:36 1 a main pipeline licence was required for a pipeline
 2 operator. Is that correct?
 3 A. Yes, after these functions were handed over, it's
 4 correct, for the year 2008.
 5 Q. Are you aware, Mr Minister, whether the financial
 6 police, in connection with their oversight of your
 7 ministry's investigation in November 2008, instructed
 8 the representatives of your ministry to include the
 9 language that appears in section VIII regarding pipeline
 10 licences?
 11 A. I don't think so.
 12 Q. I want to make sure the record is clear, sir. You don't
 13 think that the financial police directed your
 14 representatives from the ministry to include that
 15 language, or you don't know?
 16 A. The first alternative: I do not know. And I don't
 17 believe.
 18 Q. And you don't believe it because you would agree with
 19 me, would you not, that it would have been entirely
 20 improper and illegal for the financial police to direct
 21 representatives of the Ministry of Energy and Natural
 22 Resources to include language in the ministry's
 23 inspection report? Correct?
 24 THE CHAIRMAN: Strike the "illegal", please.
 25 MR SMITH: Let me rephrase the question.

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14:38 1 You do not believe, do you, sir, that the financial
 2 police would have done this, because you would agree
 3 with me that it would have been entirely improper for
 4 the financial police to direct representatives of your
 5 ministry to include such language?
 6 A. I believe it would be improper to give such
 7 instructions. However, if the financial police
 8 possessed certain information, then the financial police
 9 may inform the ministry of the facts that the police is
 10 aware of.
 11 Q. Well, can we agree, Minister, that the financial police
 12 have no competence to determine whether or not a main
 13 pipeline licence is required for an oil and gas pipeline
 14 in Kazakhstan?
 15 A. I believe this is a function of the Agency for
 16 Regulation of Natural Monopolies.
 17 Q. Thank you. Let's move on to another topic.
 18 You testified in direct on the significance of
 19 foreign investment in the oil and gas sector to the
 20 economy of Kazakhstan. I want to ask you a few
 21 questions around that.
 22 First, you would agree with me, would you not, that
 23 when seeking information regarding the status of their
 24 subsoil use contracts, foreign investors are entitled to
 25 rely on information that they are provided by your

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14:40 1 ministry?
2 A. May I ask you to clarify? What kind of information are
3 you speaking about? What kind of information provided
4 by the ministry to the foreign investors?
5 Q. Well, let's take an example. If an investor makes
6 an application for the extension of an exploration
7 contract, would that investor be entitled to rely on
8 having the ministry follow through on written
9 commitments that it makes to that investor regarding the
10 granting of that extension request?
11 A. I'm afraid I did not really understand the question.
12 I beg your pardon.
13 Q. Sure. Let me ask it again.
14 If an investor makes an application to have its
15 subsoil use exploration contract extended, would you
16 agree with me that that investor is entitled to rely on
17 having the ministry comply with a written commitment
18 that it has made to that investor that such extension
19 will be granted?
20 A. I'm afraid I don't know what you mean by "commitment"
21 It is clear that the ministry must follow the laws and
22 must follow all the government procedures existing
23 according to the national legislation.
24 Q. Okay. Fair enough.
25 Let's look at tab 19 in your binder; it's

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14:42 1 Exhibit R-163. (Pause) Are we both together at tab 19?
2 Okay. The Russian is the second document.
3 This is a letter dated April 9th 2009 to
4 Tolkyneftegaz from a Mr A Batalov. He's listed as
5 "Executive Secretary". Who is Mr Batalov?
6 A. He worked, I understand, as per this date he was the
7 executive secretary of the ministry.
8 Q. What is the role of the executive secretary of the
9 ministry?
10 A. At that date he was responsible for the matters of
11 subsoil use, among other matters. He also performed
12 other functions.
13 Q. Would it be fair to understand that Mr Batalov, or
14 whoever was serving in the executive secretary role of
15 the ministry, had ultimate authority within the ministry
16 as it relates to matters of subsoil use contracts?
17 A. Yes, he was conducting correspondence.
18 Q. And would you agree with me that if Mr Batalov made
19 a representation or commitment on behalf of the
20 ministry, it would be fair for the recipient of that
21 representation of commitment to rely upon it as being
22 truthful and accurate?
23 A. Mr Batalov has to perform his duties within the scope of
24 his authority, the scope that is well regulated,
25 written.

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14:45 1 Q. And within that scope it included subsoil use contracts;
2 correct?
3 A. Yes.
4 Q. Would you please read into the record -- it's a very
5 short letter -- those two sentences at tab 19.
6 THE CHAIRMAN: I'm sorry, I don't believe in witnesses
7 having to read documents. If you want the text to be on
8 the record, I suggest you read it yourself, and we can
9 all read it at the same time.
10 MR SMITH: That was my original inclination. There has been
11 such a battle over translations, including as to that
12 document: that was the reason. But let me read the
13 respondent's translation of the document into the
14 record.
15 It states, Mr Minister:
16 "The Ministry of Energy and Mineral Resources of the
17 Republic of Kazakhstan has reviewed your requests
18 No. 721T dated 24.03.09 and No. 680T dated 18.03.09 and
19 has resolved to: Permit extension of the exploration
20 period by 2 years until 30.03.2011."
21 Let's stop there.
22 What is your understanding, sir, of the meaning of
23 that sentence?
24 DR NACIMIENTO: May I interrupt you? Here this is one of
25 the letters where we had a disagreement on the wording

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14:46 1 and on the Russian, and we believe that the Russian
2 meaning is different. Can we ask you to read the
3 Russian?
4 MR SMITH: I've read from your translation, counsel, R-163.
5 DR NACIMIENTO: Can we ask the minister to read the Russian?
6 MR SMITH: I was just instructed not to do it, but I would
7 be happy for him to do it.
8 DR NACIMIENTO: Can we do it?
9 MR SMITH: Could you read the Russian text, sir.
10 THE CHAIRMAN: Okay.
11 THE INTERPRETER: The interpreter read the interpretation
12 from the Russian text, sir.
13 DR NACIMIENTO: I have a second objection. This is
14 referring to the entitlement, and that is a legal
15 question; that is not a question for the minister.
16 MR SMITH: I don't believe I have posed a question yet.
17 THE CHAIRMAN: Please.
18 MR SMITH: My question to you, Minister, is ...(Pause)
19 A. I am ready.
20 Q. I believe your counsel's asked that you actually read
21 the first sentence into the record.
22 A. So you want me to read it in Russian?
23 Q. Yes, please.
24 A. "Ministry of Energy has reviewed your request and
25 decided to permit extension of the exploration period by

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<p>14:48 1 two years."</p> <p>2 And incorporate the related amendments into the</p> <p>3 contract no. 302, and so on.</p> <p>4 Q. I would ask you, sir, not as a legal question but in</p> <p>5 your capacity as the minister and any other capacity as</p> <p>6 a non-lawyer: what do you understand to mean that the</p> <p>7 ministry has decided to permit the extension?</p> <p>8 A. Let me try to explain to you the routine or the process</p> <p>9 as it was then and as it is now, since it hasn't been</p> <p>10 changed.</p> <p>11 There is a so-called expert commission at the</p> <p>12 ministry, and this commission, when there is a request</p> <p>13 from a subsoil user, for example, to extend a contract</p> <p>14 or to extend the contractual territory or -- well,</p> <p>15 mainly these two issues. These matters, since these are</p> <p>16 the matters of subsoil use, and sensitive matters and</p> <p>17 complex matters, they are subjected to the expert</p> <p>18 commission. The expert commission will make a decision,</p> <p>19 and the commission -- well, the decision actually is</p> <p>20 made by the competent authority, but the commission</p> <p>21 gives recommendations. The commission gives</p> <p>22 recommendations as to whether the subsoil user may count</p> <p>23 on extension or not.</p> <p>24 If the commission decides to recommend extension of</p> <p>25 a contract, the next step will be legal formalising and</p> <p style="text-align: center;">Page 113</p>	<p>14:52 1 hand; in this particular case, a matter of extension.</p> <p>2 As far as I understand, your client, when it comes</p> <p>3 to the second portion of the work that I've just</p> <p>4 described, concerning the legal formalising of these</p> <p>5 amendments to the contract, your client has not</p> <p>6 performed this work. Thank you.</p> <p>7 Q. What efforts were made by the government, if you know,</p> <p>8 to provide my client with comments on its proposed</p> <p>9 addendum or amendment to the subsoil use contract, after</p> <p>10 your ministry sent my client the letter dated</p> <p>11 April 9th 2009?</p> <p>12 A. Frankly speaking, I do not know what efforts we are</p> <p>13 speaking about, since the draft addendum is something to</p> <p>14 be issued by the subsoil user himself, and then he will</p> <p>15 submit it; no one else will do it for him. And his</p> <p>16 draft will either be approved and accepted, or it will</p> <p>17 be amended. So it will be regular work on the text of</p> <p>18 this draft.</p> <p>19 Q. Are you aware, Minister, whether my client in fact</p> <p>20 provided the proposed addendum and failed to receive any</p> <p>21 response or comment from the government on that proposed</p> <p>22 addendum?</p> <p>23 A. Unfortunately I don't know.</p> <p>24 Q. You would agree with me, would you not, that if your</p> <p>25 ministry provides a letter to my client in response to</p> <p style="text-align: center;">Page 115</p>
<p>14:51 1 work with the amendment of the contract, and it is clear</p> <p>2 that such an amendment needs to be agreed upon, not only</p> <p>3 within the Ministry of Energy. But the key issues are</p> <p>4 the tax issues: that would be the Ministry of Finance</p> <p>5 and the Ministry of Economy. And these two ministries</p> <p>6 are the authorities who have to carry out their own</p> <p>7 expert review of such addenda, and if such a contract</p> <p>8 has been approved, such addenda are initialled.</p> <p>9 And after such approvals with all the related</p> <p>10 authorities, these particular amendments will be</p> <p>11 initialled from the relevant authorities. So the</p> <p>12 ministry has to gather all these initials. That is</p> <p>13 quite some work; it might take half a year, it might</p> <p>14 take eight months.</p> <p>15 And when these amendments have been approved, the</p> <p>16 ministry has signed off these amendments to the</p> <p>17 contract, at this moment the amendment will be</p> <p>18 registered with the Ministry of Oil and Gas. And from</p> <p>19 the moment these amendments have been registered with</p> <p>20 the Ministry of Oil and Gas, these amendments will enter</p> <p>21 into force and be legally binding.</p> <p>22 Until this moment, it is clear that the user of</p> <p>23 subsoil is in correspondence with the Ministry of</p> <p>24 Economy and with the Ministry of Finance, as well as the</p> <p>25 Ministry of Energy, in order to resolve the issues at</p> <p style="text-align: center;">Page 114</p>	<p>14:54 1 an extension request that says that the ministry has</p> <p>2 decided to grant the request and a related addendum will</p> <p>3 be incorporated, it would be bad faith on the part of</p> <p>4 the government not then to provide any comments</p> <p>5 whatsoever on a proposed addendum provided by my client</p> <p>6 for comment?</p> <p>7 DR NACIMIENTO: I believe this question has been asked. He</p> <p>8 doesn't know about it.</p> <p>9 MR SMITH: I think that's a very different question than</p> <p>10 I asked before. I'd like an answer.</p> <p>11 THE INTERPRETER: Excuse me, sir, could you please finish</p> <p>12 the part of your question. You said it would be -13 THE</p> <p>CHAIRMAN: And try to exclude the bad faith section,</p> <p>14 because that would be legal again, I think.</p> <p>15 DR NACIMIENTO: The witness has said that he doesn't know</p> <p>16 about it.</p> <p>17 MR SMITH: Counsel, we don't need to coach the witness. Let</p> <p>18 me re-ask my question.</p> <p>19 DR NACIMIENTO: I'm not coaching. You are inviting him to</p> <p>20 speculate.</p> <p>21 THE CHAIRMAN: I'm afraid his judgment as a layman is asked</p> <p>22 for. I told counsel that it should not be a legal</p> <p>23 question. But I think it's quite proper. Go ahead.</p> <p>24 MR SMITH: Mr Minister, let's back up. We've both looked at</p> <p>25 together -- and you've read into the record -- the</p> <p style="text-align: center;">Page 116</p>

14:56 1 April 9th 2009 letter from your ministry to my client
2 indicating that your ministry had decided to permit
3 extension of the Tolkyneftegaz contract.
4 My question to you is: if my client, in response to
5 this letter, provided a proposed addendum to the
6 contract to reflect that extension, and the Government
7 of Kazakhstan, through its many ministries, failed to
8 respond to or provide comments on that addendum for
9 a period of longer than 12 months, that would be
10 improper and inappropriate fulfillment of the
11 government's obligations to my client as a foreign
12 investor; would you agree with that?
13 A. Well, in the text signed by Mr Batalov, in the second
14 portion you can see the following: the amendments to the
15 contract to be executed accordingly. Whether there is a text of
such amendments,
16 how this was exactly discussed
17 with TNG, I personally do not know.
18 Q. Let's move on to another question related to this.
19 In fact it's the case, isn't it, Minister, that your
20 ministry treated the TNG contract as if it were extended
21 because in January 2010 it inspected our clients'
22 compliance with that contract; and then in July 2010
23 your ministry terminated that contract as if the
24 extension had been granted?
25 A. Well, the thing is the contracts for subsoil use are

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14:59 1 rather complex contracts. The subject-matter of the
contract is rather complex. As a rule, the ministry
tries not to attempt to terminate such contracts, but
instead takes some measures in order to reach
an agreement with the subsoil user. And in this
particular case I am not aware of the facts as to the
monitoring of this contract; I am just not aware.
Q. And tell me if you are not, and we can move to another
question; but are you aware, Minister, that this TNG
contract -- which you would probably have no reason to
know this, but it's been referred to as contract 302;
that's the number of the contract in this case -- by its
own terms was set to expire, absent the extension we
have been discussing, on March 31st 2009? Are you aware
of that?
A. Until the dispute resolution by means of arbitration,
I had no idea that such a contract no. 302 concerning
exploration, I had no idea this contract existed.
Q. Let me have you look at Exhibit C-386, and that is at
tab 13 in your binder. This is an inspection report of
Tolkyneftegaz for an inspection period, as you will see
on the second page, from January 25th to
February 5th 2010.
Mr Minister, I recall you testified earlier that you
do recall ordering an inspection of both KPM and TNG's

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15:02 1 operations in January 2010. Is that correct?
2 A. Yes.
3 Q. And C-386 is your ministry's report for Tolkyneftegaz
4 as a result of that inspection.
5 I would ask if you would look at section 9.2, but
6 let me direct you to the page in Russian. It's at
7 page -- unfortunately there are no page numbers. It's
8 section 9.2 in the Russian. Tell me when you're there.
9 A. Yes, I have it, indeed.
10 Q. You'll see at section 9.2 it references contract 302 and
11 then it indicates table 13 is "Compliance with the
12 contractual obligations in the period 1998 to 2009". Do
13 you see that?
14 A. Yes, I see it.
15 Q. And you will also see that with respect to contract 302,
16 my client was well in excess, was it not, of its
17 obligations in terms of financial contributions in
18 support of the exploration programme?
19 A. Yes, I have to read through it.
20 THE CHAIRMAN: It's a long section. Perhaps you could
21 direct the witness to certain passages.
22 MR SMITH: Yes, I will. Thank you, Mr Chairman. I was
23 actually looking simply at the table, at the totals.
24 One column is under the "Agreement", which I believe
25 is the subsoil use contract, "Obligations regarding the

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15:04 1 minimum Operating Hours". And then "Compliance with
2 [that]" as well, and those are the compliance
3 obligations.
4 A. Yes, I see the table.
5 Q. Help me here, and this may truncate the examination on
6 this point. But in the table, the number that appears
7 at the bottom \$30,030,000, do you see that?
8 A. Yes, I see it.
9 Q. What is that column intended to reflect? Because there
10 may be a translation issue with this document.
11 A. As I understand here, we have the years and the
12 obligations regarding the minimum working programme, and
13 I see that on most -- for most years the minimal working
14 programme has not been completed, and I see that there
is some extraordinary, literally, or excess of -16 completed with excess
only for years -- I can list
17 the -- read from the table.
18 So this is the first time I actually see this table,
19 and I see that in 1999 the working programme was not
20 completed; in the year 2000 it was not completed; in
21 2001 it was not completed; in 2002 it was not completed;
22 in 2003, not completed. In 2004 it is completed; in
23 2005, not completed; in 2006, not completed; 2007, not
24 completed. It is completed for the years 2008 and 2009.
25 So counting out of the eleven years, it's been

15:07 1 completed for three years and not completed for eight
 2 years.
 3 Q. Let's make sure we are defining terms here first. You
 4 would agree that these columns are reflecting US dollars
 5 expended; correct?
 6 A. It's not stated here, but I assume it's so.
 7 Q. Okay. And you pointed out a number of prior years,
 8 years prior to calendar year 2008 and 2009, where our
 9 client fell short in terms of its financial
 10 expenditures. But I'm correct in understanding that
 11 your ministry never once, during any of those years,
 12 noted a noncompliance or terminated the contracts on
 13 that basis; correct?
 14 A. We did not terminate this contract, as I understand.
 15 Q. And you also understand, do you not, that in fact for
 16 a substantial period of that time the contract was in
 17 force majeure as a result of flooding?
 18 A. Honestly speaking, I don't know about this. But judging
 19 by this table, force majeure occurred during eight out
 20 of the eleven years.
 21 Q. And then the aggregate spending by our client as of the
 22 end of 2009 exceeded the minimum commitment by over
 23 \$22 million; correct?
 24 A. This excess results from a single year, namely 2008, and
 25 I think it must be in some way artificial. However,

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15:09 1 this contract throughout all this period had not been
 2 terminated, and the company had opportunity to carry out
 3 their operations. The contract had not been terminated
 4 and the ministry by no means always resorts to some
 5 punitive measures.
 6 Q. Mr Minister, you say it must be artificial. You have no
 7 basis for that statement, do you? You in fact know,
 8 don't you, that in 2008 my client made substantial
 9 expenditures in connection with exploration wells, and
 10 in fact it reported a substantial discovery as a result
 11 of that to your agency?
 12 A. I have no knowledge. And the only thing I can say is
 13 that something counts as a discovery when the assets are
 14 entered into the national balance sheet. As far as
 15 I know, this hasn't happened. All the exploration work
 16 remains as such, all the prospected blocks remain as
 17 such until they are entered into the national balance.
 18 One can invest as much money as you wish, and yet not
 19 have a confirmed balance.
 20 Q. Well, they are not entered into the national balance
 21 because your client expropriated my clients' properties
 22 and did not permit them to complete their exploration;
 23 and under the state's stewardship, no additional
 24 exploratory work has been done. Isn't that correct,
 25 Minister?

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15:12 1 DR NACIMIENTO: I'm sorry, again, "expropriation", that's
 2 a legal term here.
 3 MR SMITH: I would assume that the Ministry of Energy knows
 4 well what expropriation is.
 5 DR NACIMIENTO: It's still a legal term.
 6 THE CHAIRMAN: I'm sorry, whatever you call it, it is clear
 7 to the minister what we are talking about. He is not
 8 being asked to define it legally.
 9 A. In actual fact the state has no automatic duties to
 10 extend all the exploration contracts. The term of the
 11 contract is the actual term of its validity, and the
 12 government never took any steps to terminate the
 13 contract.
 14 Now, whether to extend the term of the contract or
 15 not is a legal issue, and it actually takes place after
 16 a respective addendum is signed.
 17 MR SMITH: Mr Minister, since this was an inspection you
 18 ordered, do you know why your ministry was inspecting my
 19 clients' compliance with contract 302 in January 2010,
 20 if the contract expired by its own terms -- which
 21 I understand to be the position of the state in this
 22 arbitration -- in March 2009?
 23 A. Obviously I could not issue any specific directives with
 24 respect to contract 302. But if there was a general
 25 directive to carry out an examination, I think one

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15:14 1 should look into legal niceties here. And I don't know
 2 why this table made its way into the report.
 3 Q. Maybe this may explain something -- I don't know,
 4 Minister -- but at paragraph 38 of Professor Olcott's
 5 report, and I believe this was quoted in the
 6 respondent's opening at slide 5 on liability.
 7 Respondent's position, through Professor Olcott, is:
 8 "... I [Professor Olcott] gained a new appreciation
 9 of the power and autonomy of bureaucrats, the rigidity
 10 with which some execute their tasks, not because they
 11 have been ordered to do so, but because this is their
 12 sphere of power and they will not have it denied."
 13 She then goes on later:
 14 "Rather I find the opposite to be true; most
 15 bureaucrats I encounter are literalists, eager to
 16 enforce the very letter of Kazakh law, with no notion
 17 that there might be a spirit of the law that demands
 18 some flexibility from them."
 19 My question to you, sir: does that accurately
 20 describe the bureaucrats within your ministry, and how
 21 they apply their duties under the oil law of Kazakhstan?
 22 A. I would say, referring to this example of the table that
 23 we have here, that the ministry had been displaying
 24 flexibility during eight years.
 25 Q. My question to you is whether you agree with

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<p>15:16 1 respondent's expert on Kazakhstan, who indicates that 2 bureaucrats that work within your government are: 3 "... literalists, eager to enforce the ... letter of 4 [the] law, with no notion that there might be a spirit 5 of the law that demands some flexibility from them." 6 Do you agree that that accurately describes the 7 employees of the Ministry of Energy and Natural 8 Resources? 9 A. Well, in the civil service, as in any other bureaucracy, 10 there are its own peculiarities. Each official has his 11 or her formally described scope of competence, and they 12 have to comply with the relevant official regulations. 13 But when a major decision is being taken, the 14 responsibility for the substance of such decision starts 15 at a relatively high level. It may be the minister or 16 deputy minister who takes such a decision and assumes 17 responsibility, of course again within a certain scope. 18 So they take certain substantive decisions, and each of 19 them has its own limits of flexibility. 20 So one can display certain flexibility. On the 21 other hand, there are job descriptions, regulations, and 22 this I think is the life of any official. 23 Q. Thank you, sir, for that. You would agree with me, 24 would you not, that the decision to terminate a party's 25 subsoil use contract is a significant decision that is</p> <p style="text-align: center;">Page 125</p>	<p>15:22 1 "- unlicensed operation of ... trunk oil and gas 2 pipelines [has been committed] ... " 3 Do you see that? 4 A. Yes, I see it. 5 Q. Contract 302 covered an exploratory block where, to the 6 best of my knowledge, there were no pipelines. Do you 7 know why my client is being given a ground for potential 8 termination of its contract 302 no. 302 for operating 9 a trunk pipeline with respect to that contract? 10 A. I don't know. In this case I don't know this. 11 Q. Let's turn now to the contract termination that is 12 addressed in the bulk of your statement. 13 At paragraph 5 in your witness statement -- do you 14 have that in front of you? In that paragraph you 15 discuss the termination of the subsoil use contracts of 16 TNG and KPM; correct? 17 A. Yes, I see it. 18 Q. And when you say in your statement that the termination 19 of those contracts was lawful -- on a number of 20 occasions you've refused to answer questions because you 21 are not a lawyer and they call for legal conclusions --22 do you 22 know why you are giving an opinion to this 23 Tribunal in your statement that the termination of the 24 contracts of KPM and TNG were lawful? 25 A. Because on the order for termination of the contract -</p> <p style="text-align: center;">Page 127</p>
<p>15:18 1 made at the highest level within your ministry? 2 A. With respect to termination, let's say introduction of 3 trust management for KPM and TNG, this was a major 4 substantive decision, let's say, taken at my level. 5 Q. Let's look at tab 1 in your binder, which is 6 Exhibit C-7. You will see under Exhibit C-7 this is 7 a letter on the letterhead of the ministry, signed by 8 Mr Safinov. He is the executive secretary; is that 9 correct? 10 A. Yes. 11 Q. And you can see that this is a notice of infringement of 12 obligations to my client, Tokynneftegaz, under contract 13 no. 302. Do you see that? 14 A. Yes, I see the letter. 15 Q. You would agree that for such a significant decision 16 being made by a letter of July 14th 2010, your ministry 17 would not be giving a notice of infringement for 18 a contract that had in fact expired over a year earlier? 19 A. I think one would need to look into the formal legal 20 aspects, and I can't comment on this. 21 Q. Let me have you then look at the -- there are four 22 grounds provided for notice of infringement; I want to 23 look at the third, which is the third bullet or dash --24 I'm sorry, 24 there are five, and I want to look at the 25 fourth, my apologies, where it 25 says in the English:</p> <p style="text-align: center;">Page 126</p>	<p>15:24 1 and the decision was taken on the merits of the case, as 2 I understand -- it was initiated by the lawyers of the 3 ministry. 4 Q. Was that decision literal compliance with the law or was 5 it in compliance with spirit of the law, as Professor 6 Olcott defines it? Or do you know? 7 A. In my view the order was signed by my deputy, 8 Mr Magauov, who was at that time acting minister. But 9 I think if I were at my office, I would have taken the 10 same decision. 11 Just imagine July 2010 and the social problems have 12 arisen there: the employees are not paid their salaries; 13 there are no managers in place; the oil is pumped; money 14 is directed one doesn't know where; not a single dollar 15 is invested in the field. One couldn't -- this couldn't 16 go on physically, so one had to take some decision, and 17 essentially such decision as to introduce temporary 18 management. And this had been going for quite some 19 time. It was obvious that the investor was not going to 20 do anything and hardly anything would be remedied. This 21 was the actual situation in June[July] 2010. 22 Obviously, as always, there are procedural legal 23 aspects which the minister or deputy minister, acting 24 minister, refers to the legal department. You asked me 25 before whether there's a certain flexibility or no</p> <p style="text-align: center;">Page 128</p>

15:27 1 flexibility. So the substantial decision is one thing
2 and observing certain procedures is another thing.
3 It is, of course, essential to observe the
4 procedures, and I suppose that such procedural matters
5 had been also complied with because the respective
6 initials of the legal department were there on the draft
7 order, and they are responsible for observing all the
8 procedural provisions.

9 Now, apart from the procedure, substantively the
10 situation was such that there was actually no
11 alternative, no alternative to introducing temporary
12 management, trust management. And this was the
13 situation that had been going on for months and there
14 was no end in sight.

15 Q. Thank you, sir, for that answer.

16 Let me ask you this: you had ordered an -- I believe
17 it's called -- extraordinary verification inspection
18 that took place in January and February 2010 of the
19 operations of both KPM and TNG; correct?

20 A. I beg your pardon?

21 Q. Yes, let me rephrase the question.

22 You were discussing the events in June and
23 July 2010. I want to take you back to the inspection
24 that you ordered that took place in January and
25 February 2010, so only four months earlier. Do you

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15:29 1 recall that inspection?

2 A. Yes.

3 Q. In connection with that inspection, do you recall that
4 your agency generated very comprehensive inspection
5 reports? They appear in your binder at tabs 12 and 13:
6 tab 12 for Kazpolmunay and tab 13 for Tolkynneftegaz.
7 Those are Exhibits C-385 and C-386. Do you recall
8 receiving those inspection reports?

9 A. It's a rather large report. Clearly I do not recall the
10 details of the text. However, already at that time it
11 was clear that the matter of trunk pipelines and the tax
12 matters had not been resolved, already early in 2010.

13 Q. Well, in fact by early 2010 isn't it the case, sir, that
14 KPM had been assessed a fine of US\$145 million in
15 connection with the criminal trial of its general
16 manager, Mr Cornegruta? That had already taken place;
17 correct?

18 A. That's correct. There was a court judgment to that
19 effect.

20 Q. Well, let's go back to Exhibits C-385 and C-386. Just
21 hold those and look at tab 9. I want to make sure that
22 we are in agreement. This is Exhibit C-171. I want to
23 direct your attention to the last page behind that tab.
24 Are you with me? We are on the very last page, which is
25 an order dated January 22nd 2010. I want to confirm

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15:33 1 that that bears your signature.

2 A. It does.

3 Q. Okay. And in that order, you order the unscheduled
4 inspection, as of January 22nd 2010, of Tolkynneftegaz;
5 and there is also a similar order, bearing your
6 signature, with respect to [KPM]. Correct?

7 A. I recall signing these documents, I believe I did, in
8 respect of both companies.

9 Q. Then if we look back at the results of that inspection
10 that you ordered, which is at [tabs 12 and 13] in your
11 binder -- let me ask a general question, and we can get
12 more specific -- both of those inspections in fact
13 concluded that my clients were in compliance with their
14 subsoil use contract obligations; correct?

15 A. Apparently so.

16 Q. So four months prior to the unscheduled inspections that
17 you initiated in the summer of 2010, your agency had
18 done a thorough and complete unscheduled inspection of
19 my clients, and in fact had found no material contract
20 violations; correct?

21 A. In this respect, these very substantial decisions which
22 are made by the minister, it is clear that the tax
23 issues, the issues related to the trunk pipeline, they
24 did not get regulated in the winter. And in fact the
25 ministry, and me personally, impersonated by me,

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15:35 1 resisted -- I don't know what other word to use -- I did
2 not want to terminate these contracts. I did not want
3 to. It seemed that the investor must find a way to
4 resolve his issues. And it is my right to decide
5 whether I follow the recommendations of the inspections
6 or not.

7 So this is not a legal or formalistic decision any
8 longer; this is a decision on the merits.

9 In fact, in July the situation was no longer
10 tolerable, and a substantive decision at the level of
11 a person who carried out the ministerial duties -- and
12 here I make no difference between myself or my deputy --
13 it's a decision on the merits. Something needed to be
14 undertaken because the situation could no longer remain
15 as it was in July.

16 Q. Thank you, Minister. Let me ask if I understand you
17 correctly.

18 Would I be correct in understanding that the
19 decision to terminate the subsoil use contracts in the
20 summer of 2010 was not based on lack of compliance with
21 those contracts, because in fact your ministry had found
22 my clients to be not only in compliance with the
23 contracts four months earlier, but to have greatly
24 exceeded their financial obligations? And we can go
25 back if you question that.

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15:37 1 But it was as a result of the main pipeline fine
 2 that had been assessed against my company, as a result
 3 of the prosecution of Mr Cornegruta and as a result of
 4 a significant tax assessment, and in particular
 5 a disputed tax assessment related to corporate income
 6 taxes: those were the two reasons that were given, they
 7 were the principal reasons for the decision of your
 8 ministry to terminate my clients' contracts; correct?
 9 A. I disagree.
 10 Q. Okay. Why do you disagree?
 11 A. Because if you look at the list of noncompliance matters
 12 revealed by the commission in July 2010, this is
 13 a comprehensive list. And not only the trunk pipeline
 14 matter and not only the tax matters, but also
 15 noncompliance as to the contractual duties related to
 16 education and the decommissioning fund and other
 17 matters.
 18 In fact, in 2009 the physical scope of the works did
 19 not get achieved. So we did still make some attempt.
 20 And when it comes to the amount of the drilled wells in
 21 the field, this amount was not achieved either.
 22 We were trying to extend this agony, or prolong this
 23 term, and we hoped the investor would find a way out of
 24 this. And in fact the notice from the ministry already
 25 regarding 2009 -- I am very sure I recall it -- this
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15:39 1 notice was sent to TNG. And I don't know if I'm
 2 entitled to, but I do remember this notice was drafted
 3 and was issued by the ministry; I do have it in my
 4 memory. I can ask -- according to the governance,
 5 I will ask my lawyers to produce this notice and
 6 demonstrate it.
 7 THE CHAIRMAN: May I just ask, we are at a time when
 8 a coffee break may be needed: by the witness, but by all
 9 of us. But if you want to finish something first, we
 10 can do that.
 11 MR SMITH: This will take longer, so let's take it now.
 12 THE CHAIRMAN: Okay. So we have a break until 4 o'clock.
 13 Thank you.
 14 May I recall to you, Minister, something that I've
 15 had to tell every witness: that during the break you
 16 should not discuss the matter with the parties.
 17 THE WITNESS: May I come into the room?
 18 THE CHAIRMAN: Of course, you can have a coffee and
 19 everything; just don't discuss the testimony with the
 20 party, that's all.
 21 THE WITNESS: Thank you.
 22 (3.40 pm)
 23 (A short break)
 24 (4.02 pm)
 25 THE CHAIRMAN: Right, we are all back, so we continue with
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16:02 1 the cross-examination.
 2 MR SMITH: Thank you.
 3 Minister, you said before the break that in
 4 considering whether to terminate the KPM and TNG
 5 contracts in contracts in 2010, you noted that in 2009
 6 the fiscal scope of the works for KPM and TNG were not
 7 achieved, and you gave a couple of examples: number of
 8 wells drilled, as well as the amount of money committed
 9 was not achieved either. Do you recall that testimony?
 10 A. I was speaking about the number of wells.
 11 Q. Because you in fact know that my clients not only
 12 achieved but far exceeded their minimum work programme
 13 obligations, and that is documented in the inspection
 14 that you ordered that was completed in February 2010;
 15 correct?
 16 A. I've said already that the financial obligations were
 17 exceeded in the years 2008 and 2009, and not completed
 18 in the eight preceding years.
 19 Q. Let's be specific, because I believe you were talking
 20 about the exploration contract then. Let's look at the
 21 inspection you ordered; it appears at tab 12, C-385.
 22 This is the inspection of KPM, and I'll ask you to look
 23 at page 6 of the Russian version.
 24 A. And you mentioned the page?
 25 Q. Yes, page 6. Are you there? We are looking at
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16:04 1 section VII, "Borankol Field", "Information about
 2 fulfillment of minimum work programs". Do you see that?
 3 A. Yes, I see it. Shall I read this section?
 4 Q. I will ask you -- and if you feel the need to read it,
 5 absolutely; that's your privilege. But let me ask you
 6 to look at the third paragraph, which begins:
 7 "The obligations regarding the minimum work program
 8 for the period 1999 -- 2009 amounted to a total of
 9 71,915 thousand US dollars. De facto there were
 10 performed works amounting to 473,014.3 thousand
 11 US dollars, which exceeds [the] amount of contractual
 12 obligations by 6.6 times."
 13 Do you see that?
 14 A. Yes, I see this table. And you showed me a table before
 15 which I also saw for the first time for contract 302,
 16 and my comment with reference to the financial
 17 obligations under contract 302 with respect to Tabyl
 18 block.
 19 Now, as far as the Borankol field is concerned,
 20 I personally, until the year 2010, when the company KPM
 21 was apparently handed over into trust management, many
 22 things were not known to us; in particular, the extent
 23 of the growing flooding or watering of the wells already back in the
 24 year 2008. And
 25 with respect to the lack of the necessary numbers of drilled wells,
 one should make a distinction between the financial
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16:07 1 obligations and the physical volume of work.
 2 As I understand, in 2009 the physical volume of work
 3 was not performed. You show me now performance of
 4 financial obligations. If this is an excerpt from our
 5 report, of course I accept this. I was talking about
 6 the failure to drill the necessary number of wells in
 7 2009, which, as it became known to me personally -- it
 8 became known to me personally after July 2010.
 9 Q. Minister, if you will look at the table which appears
 10 on -- again in section VII, after the provision that's
 11 quoted, you will see the ministry has prepared a table
 12 of contractual obligations under the minimum work
 13 programme in US dollars, as compared to fulfilment of
 14 those obligations.
 15 You would agree with me, would you not, that with
 16 respect to Borankol field, KPM had exceeded its minimum
 17 work programme obligations in terms of funding by over
 18 US\$400 million? Correct?
 19 A. Yes, I see this table, and if it is really an excerpt
 20 from the report, I can do nothing but accept it and
 21 agree. But again I mention the fact that probably the
 22 money was spent on something else. But in 2009 the
 23 requisite number of wells were not drilled.
 24 Q. What is the basis for that statement?
 25 A. After KazMunaiGas assumed trust management, the picture
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16:09 1 became more obvious from inside. The inspection carried
 2 [out] from outside with a small team cannot identify all
 3 the relevant facts. So the facts of the growing
 4 flooding of the field back in 2008 became a kind of
 5 discovery for us.
 6 Q. In 2009, with respect again to Borankol -- and we are
 7 looking again at the chart that was prepared by your
 8 ministry -- in 2009, during the year in which my clients
 9 were being subjected to a criminal prosecution for
 10 operation of a main pipeline and a disputed tax
 11 assessment, among other things, you would agree with me,
 12 would you not, that your ministry reflected that my
 13 client spent approximately US\$50 million in excess of
 14 what they had committed to the state to spend in that
 15 year?
 16 A. I do not cast doubt on this table. I've said already
 17 that if this is really an excerpt from the report -18 which I haven't
 18 seen -- I must accept this. But
 19 actually I am saying that the requisite number of wells
 20 which would also prevent the flooding of the wells, was not drilled
 21 in 2009, and this knowledge was gained
 22 after KazMunaiGas assumed trust management of the field.
 23 Q. While we're looking for that, you also mentioned that
 24 one of the things that my clients were not doing was not
 25 complying with their contractual duties related to
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16:12 1 education and training of specialists. Do you recall
 2 that? (Pause)
 3 Did you understand my question?
 4 A. Not quite, I'm afraid.
 5 Q. Before the break you said that one of the reasons that
 6 you chose to terminate the contracts of my clients in
 7 2010 was that they had failed to comply with their
 8 contractual duties related to education. Do you recall
 9 that?
 10 A. Yes.
 11 Q. You in fact know, don't you, sir, that my clients had in
 12 fact fulfilled their obligations, both with respect to
 13 KPM and TNG, on the training of Kazakh specialists, and
 14 were seeking guidance from your ministry regarding where
 15 to contribute additional funds in excess of their
 16 contractual obligations?
 17 I will ask you to look at the Russian version of the
 18 document behind tab 12 (C-385) at page 11 of the
 19 Russian, page 10 of the English. Do you see
 20 section 7.1? (Pause)
 21 Are you with me, sir?
 22 A. I am reading. (Pause)
 23 It is said here, as I understand, that the funding
 24 of education amounted to a smaller sum than contractual
 25 obligations. And the difference ... And the management
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16:16 1 of KPM asked the ministry to whom the remaining money
 2 should be directed.
 3 Probably one should check whether such letter
 4 existed. And I hope that the officials of the ministry
 5 who are also witnesses on Kazakhstan's part will explain
 6 these details, because I'm not aware of the details and
 7 I don't remember them.
 8 I know that there were several positions, not only
 9 with respect to the failure to allocate enough money for
 10 education purposes but also a failure to provide the
 11 necessary information, a failure to allocate sufficient
 12 money to the decommissioning fund, and also incomplete
 13 performance of the obligations with respect to
 14 education.
 15 Whether there's been a letter, who was addressed,
 16 whether a response to this letter was received from the
 17 Ministry of Energy unfortunately is not known; I'm not
 18 aware of this.
 19 Q. Well, Minister, you've identified as a ground for
 20 terminating the contract -- this is the ministry's
 21 report, recall; this is not my clients'. Your report
 22 from your ministry indicates that my client had excess
 23 funds above the amount needed for training of Kazakh
 24 specialists: it had excess funds of \$461,200. And that
 25 it wrote a letter to your ministry, and your ministry
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16:18 1 never provided an answer as to where to send those
 2 funds.
 3 So explain to me why your ministry chose to
 4 terminate my clients' contract on that basis, if your
 5 ministry was non-responsive to its enquiries as to where
 6 to provide the training funds?
 7 A. The facts that are mentioned in this report -- the lack
 8 of funding and the failure to provide information, the
 9 failure to allocate money into the decommissioning
 10 fund -- were actually among the reasons for termination
 11 of the contract.
 12 But the key reason, once again, was something else.
 13 The fact is that it was impossible not to terminate this
 14 contract in July because there were no managers present
 15 at this field. Essentially there was already a social
 16 conflict at this field: the workers were already
 17 gathering there and demanding payment of their wages and
 18 work.
 19 Q. Mr Minister, the reason that my client didn't have
 20 certain senior-level managers in the summer of 2010 in
 21 your country was because they were being hunted by the
 22 financial police -- correct? -- in connection with
 23 criminal prosecutions associated with the operation of
 24 a main pipeline.
 25 A. The financial police was -- either it was hunting or

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16:20 1 not; to what extent it was hunting, I am not aware. But
 2 the fact [is] that the managers were not there, and
 3 without some kind of management -- one couldn't tolerate
 4 that the fields were left without management.
 5 Now, when you say the financial police was hunting,
 6 whether it's true or not, with your permission, I would
 7 ask another question: do you think that if someone fails
 8 to perform its payment obligations, should this person
 9 be hunted by financial police or not?
 10 Q. I guess the question depends on whether those payment
 11 obligations are being legally or illegally imposed by
 12 your government, but I think that's for the Tribunal and
 13 not for me.
 14 Let me ask you this: you've said a number of times
 15 that there was social unrest in the summer of 2010 that
 16 precipitated the need to take over my client's
 17 properties. What is your evidence that there was any
 18 social unrest in the region?
 19 A. It is a known fact. And even within the framework of
 20 his visit to the region, the Prime Minister had not
 21 planned to visit the facilities of KPM; he was forced to
 22 visit them in order to calm down the population, which
 23 in one way or another was involved at the territories
 24 where KPM facilities were situated.
 25 In actual fact, no matter how the investor works or

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16:22 1 who works there, the social consequences are, let's say,
 2 always in the remit of the government. So if there are
 3 some social problems, it's usually up to the government
 4 to try to resolve the situation.
 5 Q. Sir, in fact the reason that the Prime Minister had to
 6 visit at the time of the takeover was because there was
 7 tension caused by the decision of the government to take
 8 over the properties, and the employees of KPM and TNG,
 9 who had been fully paid their wages until that time,
 10 were very concerned about their jobs in light of the
 11 government takeover of the properties. Isn't that in
 12 fact why the Prime Minister visited?
 13 A. The government was not taking over. And I replied
 14 before the break that the ministry was [prolonging] the
 15 situation as long as it could. The termination might
 16 have taken place much earlier. And the trust management
 17 was introduced at the stage where one could no longer
 18 tolerate the continuation of the actual situation. The
 19 grounds to terminate the contract were in place much
 20 earlier than June 2010.
 21 Q. Sir, let me come back to my question.
 22 What is your evidence, if any, that my clients had
 23 failed to pay wages and that the social unrest in the
 24 regions of Borankol and Tolkyin had anything to do with
 25 my clients?

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16:25 1 A. I met the people there, and they asked when one would
 2 put an end to this. There was no one to speak to at
 3 TNG; if I remember correctly, there was only one person.
 4 At the time of our visit, TNG was represented by just
 5 one person, and one has to speak to someone. People,
 6 the workers, must have a chance to speak to someone.
 7 What were we expected to do?
 8 Q. The visit that you made with the Prime Minister to
 9 announce the takeover of the properties in the summer of
 10 2010, did your ministry or did the Prime Minister's
 11 Office direct my clients to build helipads to welcome
 12 the helicopters coming in with the delegation from the
 13 state?
 14 A. I don't know. In any case, the ministry does not work
 15 with such issues.
 16 Q. Did you in fact arrive in a helicopter and land on
 17 a helipad that had been built by my clients to welcome
 18 your arrival?
 19 A. It is possible, because we flew by helicopter over the
 20 entire region, including Zhenesin, where subsequently,
 21 by the way, there was social unrest, which is in no way
 22 related to Tolkyin [and Borankol]; just to mention that
 23 the social unrest in the making must be addressed
 24 somehow and resolved. We apparently arrived by
 25 helicopter there as well because it was by helicopter

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16:27 1 that we were travelling at that time.
 2 Q. It's true, is it not, Minister, after the state placed
 3 my clients' properties into trust management, there has
 4 been social unrest specifically at Borankol and Tolkyin,
 5 including very violent confrontations with the
 6 government, under its stewardship of the properties?
 7 A. At Borankol territory there was no unrest. Everyone
 8 received then and still receives their wages. There
 9 were many applications with reference to unpaid pensions
 10 and some other payments due in the preceding period. So
 11 the government was paying part of the monies, not from
 12 the accounts under trust management but from other
 13 sources, in order to quell the possible source of social
 14 unrest.
 15 Now, as for the account of trust management, our
 16 lawyers counted that such payments might be
 17 inappropriate, and there may be protests made,
 18 challenged subsequently. Therefore the government made
 19 social payments to Borankol workers from other sources.
 20 Q. Have any new wells been drilled at either Borankol or
 21 Tolkyin since the government placed those properties or
 22 assets into trust management?
 23 A. Not initially. Initially, exactly not; probably not
 24 even now. But the situation exactly is that something
 25 has to be done with the flooding.
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16:30 1 Q. Have any well work-overs been performed while these
 2 assets have been in the stewardship of the government?
 3 A. The layout is like this: KazMunaiGas carries out the
 4 minimal possible volume of work in order to maintain
 5 production from its own assets, and then an independent
 6 auditor checks where and for what purposes the money was
 7 spent to maintain the level of production. And after
 8 an independent auditor provides his report, KazMunaiGas
 9 receives compensation, these monies refunded from the
 10 account under trust management.
 11 Q. My question was: have any well work-overs been performed
 12 since the assets have been under state management? Is
 13 the answer to that "no"?
 14 A. I have no knowledge of this, because it is KazMunaiGas
 15 who carries out the management. Maybe my colleagues may
 16 reply, but I just don't know.
 17 Q. The government also seized an LPG facility that was
 18 approximately 90% complete at the time of seizure. Do
 19 you know whether any further construction has been
 20 performed on that LPG facility?
 21 A. No work has been carried out, because again there was
 22 a legal opinion that these operations do not belong to
 23 the category of works which have to be carried out in
 24 a mandatory way, so that subsequently such costs can be
 25 challenged. Therefore, at present the plant is in
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16:33 1 conservation. The possible costs are carried by
 2 KazMunaiGas, and these costs are not reimbursed from the
 3 account under trust management. So the plant itself is
 4 in a state of conservation.
 5 Q. Is it the case, Minister, that total employment of
 6 Kazakh citizens at Borankol and Tolkyin today is far
 7 fewer than were employed by my clients prior to the
 8 state takeover?
 9 A. I don't know. I have no knowledge of exact figures.
 10 Q. Do you know whether there are more or less employees
 11 today than there were in July 2010, when the government
 12 placed my clients' assets into trust management?
 13 A. I reiterate that I do not know. The only thing that
 14 I can do is I can guess. It is clear that there is
 15 limited scope of work, limited to the maintenance of the
 16 production levels, and there are no significant
 17 investments carried out, and the money is placed at the
 18 account of the trust manager.
 19 So as a result, we can expect that the number of the
 20 employees will be reduced. By the way, the government
 21 is trying to resolve the matter of employment of the
 22 dismissed employees.
 23 But this is what I can guess. But as to
 24 Specifically TNG and KPM, I have no figures to give you
 25 as to the dynamics of such employment change.
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16:35 1 Q. It's true, is it not, Minister, that there has been
 2 a substantial deterioration in the condition of both
 3 Tolkyin and Borankol fields under the state's trust
 4 management, as compared to the condition of those fields
 5 when my clients were operating those fields?
 6 A. Now we know the situation better, the thing is that
 7 prior to 2008, Borankol and Tolkyin produced stable
 8 volumes of gas; there were no significant fluctuations.
 9 And the percentage of flooding of the wells was also at
 10 a minimum level.
 11 From early 2008 these fields experienced
 12 a significant increase of gas production; and
 13 I reiterate that this is exactly from early 2008, and we
 14 are speaking about a very significant rise in production
 15 levels. And together with this increase, they also
 16 experienced significant flooding, and the volume of the
 17 water extracted significantly increased as well, and
 18 that was noticed by the previous investors. It is clear
 19 that this increase of production was maintained for some
 20 one and a half or two years, and after that there was
 21 a decrease.
 22 However, together with this, the level of flooding
 23 resulting from such increase in production was
 24 significantly increased. Therefore, there are some
 25 issues as to the conditions of the field now.
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16:38 1 Q. The increase in production that you have referred to was
2 specifically approved by your ministry -- correct? -- as
3 part of the approval of the minimum work programmes of
4 my clients?
5 A. There is a central commission within the ministry, the
6 Commission for Development, and this commission consists
7 not only of the employees of the ministry. And this
8 programme was indeed approved.
9 Q. And as to the watering of the wells, in fact, in order
10 to assist in addressing that watering, there has been no
11 effort to work over any of those wells, consistent with
12 normal business practices, while under state
13 stewardship; correct?
14 A. Not only during the state stewardship, but even under
15 the previous investor's management. In 2009 they did
16 not drill the sufficient amount, necessary amount of
17 wells.
18 Q. Alright. Let's move to a different topic, Minister.
19 I'd like you to look at tab 10 in your binder,
20 C-293. This is a letter dated [August 26th] 2009 from
21 the akim of Mangystau oblast to the Prime Minister,
22 Prime Minister Massimov.
23 My first question to you is: have you seen this
24 document before today?
25 A. There had been several letters from akim; I'm not sure

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16:40 1 I saw this particular one. I have to read the text of
2 it, if I may.
3 Q. Please do. (Pause)
4 Minister, you have had an opportunity to review
5 C-293?
6 A. Yes, I have read it.
7 Q. Have you seen it before today?
8 A. I don't recall this letter.
9 Q. The position "Akim of Mangystau Oblast", what is that
10 position, if you know?
11 A. It's the head of the region.
12 Q. Okay. And in the first paragraph of this letter from
13 the head of the region to the Prime Minister, it states
14 that the head of the region had raised:
15 "... a question about making a decision regarding
16 the state's buyout of assets of subsoil users ... [Ascom
17 Group, TNG and KPM]."
18 Do you see that?
19 A. I see that.
20 Q. And you see in the next paragraph that it references
21 a June 5th 2009 instruction no. 11-18/3712 issued by the
22 Prime Minister to the Ministry of Energy and Mineral
23 Resources, the Ministry of Finance, the Ministry of
24 Justice and Samruk. Do you see that?
25 A. I don't know where it says: by you. We haven't issued

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16:44 1 any such instructions.
2 Q. Well, when I say "by you", is it not a reference to
3 an order issued by the Prime Minister, who is being
4 referenced in this letter, to the Ministry of Energy,
5 the Ministry of Finance, the Ministry of Justice and
6 Samruk?
7 And my question to you is: do you recall, in your
8 capacity as minister at this time, that you had been
9 issued an order by the Prime Minister to consult with
10 the Ministry of Finance, the Ministry of Justice and
11 Samruk regarding taking a decision about the state's
12 buyout of the assets of TNG and KPM?
13 A. I never received -- there were never such instructions.
14 And in fact the head of the region, understandably, as
15 any head, he is the first one liable for the social
16 peace in the region. He is to ensure that the
17 enterprises in his territory work well, that the people
18 get employed and so on.
19 So I know that Kazpolmunay and Tolkyun cooperated
20 with akim, and akim defended, always defended this
21 enterprise. He lobbied this enterprise, if you like.
22 And moreover, they always worked on some kind of
23 three-party contract on gas supply to the plant
24 producing fertilisers. It took them quite a long time,
25 but they failed to achieve something.

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16:46 1 The functions of the regional leader include
2 assistance to the business and ensuring social peace,
3 and he does not have anything within the scope of his
4 authority to deal with buyout of assets of any
5 enterprise, as akim or as any other leader of a region.
6 He doesn't have these kinds of functions in his scope.
7 And if we speak about ministries, a ministry doesn't
8 deal with buyout of enterprises either. Purchase of
9 enterprises or buyout is not -- historically there is no
10 such fact where a ministry would purchase or buy out
11 a company, and the Ministry of Oil and Gas in
12 particular.
13 What I know is that Tolkyun attempted to sell itself
14 and its companies, and he even opened the data room and
15 made the data room available to potential buyers; and
16 when these potential buyers became familiar with the
17 facilities that they were to purchase, they one after
18 another withdrew their intentions.
19 Q. Minister, let me direct you back to any question. Are
20 you denying that the Prime Minister gave an order
21 no. 11-18/3712 directed to your ministry, as well as the
22 Ministry of Finance, the Ministry of Justice and Samruk
23 regarding taking a decision about buying the subsoil
24 assets of TNG and KPM?
25 A. I deny. I deny this. And I add that KazMunaiGas, or

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16:48 1 a department within KazMunaiGas, as far as I understand,
2 was engaged in carrying out negotiations with Tolky
3 companies.
4 Q. So, to be clear, Minister, if this Tribunal were to
5 order the government to produce this numbered directive
6 from the Prime Minister, it's your view that it would
7 not exist within the files of the government; is that
8 correct?
9 A. I wish I could see the text of this order -10 Q. We do too,
Minister.
11 A. -- or of this directive.
12 Q. We do too. It's not been produced.
13 Let me move to the next paragraph, where the akim
14 says that there has been a failure of your ministry to
15 provide the necessary information regarding an analysis
16 and a provisional estimate of the value of the assets of
17 Ascom.
18 Do you recall the ministry being asked to provide
19 such an estimate?
20 A. What can we provide? Even if we really wanted to, what
21 estimates can we provide for this company? When it
22 comes to requesting the information on provisional
23 estimates of the assets, this is not a serious request.
24 The ministry never makes such estimates.
25 Q. Samruk, which is referred to in that same paragraph, is

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16:50 1 it capable of making such an estimate?
2 A. Samruk may make such an estimate; not by themselves, but
3 by a daughter company, production and exploration, through the
access to data
4 room. And this was what happened at the time -- sorry,
5 through visiting the data room, and together with other
6 potential buyers, they visited the data room of
7 Tolkyneftegaz, Kazpolmunay.
8 Q. You had previously headed Samruk; is that correct?
9 A. I headed it until I moved to the Ministry of Energy and
10 Mineral Resources. For one year I was the chairman of
11 the board of national company Samruk. The company was
12 founded in my presence.
13 Q. And at the time of C-293, August 2009, Samruk was headed
14 by Mr Kulibayev; correct?
15 A. Quite possibly, because after me I believe the company
16 was headed by Mr Bozumbayev, I'm not sure; after him,
17 Mr Kelimbetov; then Bozumbayev; then Kulibayev. And
18 particularly in August 2009, well, I'm not sure whether
19 it was Mr Kulibayev, but at some point he was the head
20 of Samruk.
21 Q. And in the last paragraph of the letter, the akim
22 states:
23 "... we consider that it is necessary for the
24 Competent Body to give instructions about speeding up
25 the commencement of proceedings on termination of the

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16:53 1 Contract of Subsoil Use until expiration date."
2 Do you see that?
3 A. Just a second. (Pause) As you know, there were no
4 instructions, and the ministry did not take any
5 decisions.
6 Q. Well, with all due respect, we -- at least on this side
7 of the table -- do not know that, because we have not
8 seen the instructions referred to above by the Prime
9 Minister.
10 Let me move to tab 11 in your binder, which is
11 Exhibit C-294, which is a letter dated September 21st
12 2009 from your ministry, and from the executive
13 secretary of your ministry, Mr Safinov, to the Ministry
14 of Industry and Trade. Have you seen this document
15 before today?
16 A. I did see this document the day before I arrived in
17 Paris.
18 Q. This document was provided to you in connection with
19 your preparation; is that correct?
20 A. I looked through the documents, and this letter was
21 among them.
22 Q. In the first paragraph of the ministry's letter, it
23 states:
24 "In compliance with order No. 4489 of A Musin, the
25 Head of the Administration of the President of the

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16:55 1 Republic of Kazakhstan, dated September 21, 2009,
2 in addition to letter No. 04-17-1384 of Akym of
3 Mangystau region dated September 10, 2009 regarding
4 acquisition of assets of [TNG] by KaspiyAzot LLP, we
5 inform you as follows."
6 Do you see that?
7 A. Yes, I do.
8 Q. And KaspiyAzot is the ammonia manufacturing plant that
9 was being considered for the region at the time; is that
10 correct?
11 A. Yes.
12 Q. And Mr Kulibayev has an interest in KaspiyAzot; is that
13 correct?
14 A. I disagree. Mr Kulibayev has nothing whatsoever to do
15 with KaspiyAzot. And it is actually KaspiyAzot that was
16 lobbied by akim of Mangystau region, because he wanted
17 to have a plant in their region, a plant for producing
18 fertilisers. And he had a Japanese investor, a company
19 called Marubeni. And the Japanese Marubeni and
20 KaspiyAzot, Tolkyne, all these were in long negotiations
21 together with Tolkyne concerning supply of gas to this
22 potential plant for producing fertilisers.
23 So at some moment I understand they failed to reach
24 an agreement. At least -- well, they failed to reach
25 an agreement.

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<p>16:58 1 Q. The ammonia manufacturing facility that was being 2 contemplated by KaspiyAzot needed a dedicated supply of 3 natural gas; correct? Because that's the principal 4 feedstock for the manufacturing of ammonia? 5 A. That's right. 6 Q. And -- go ahead. 7 A. And it is my understanding that Tolkyneftegaz also was 8 interested in supplying gas to KaspiyAzot. 9 Q. In the next line of the letter -- it's underlined in the 10 Russian as well as in the English -- the English 11 translation says: 12 "In relation to making offers on a free of charge 13 transfer of assets of [TNG]." 14 This is a letter on the ministry's letterhead. What 15 is a "free of charge transfer of assets"? 16 A. Specifically what we did not agree was the specific 17 structure of that, since KaspiyAzot is a private company 18 with a foreign investor's shareholding. And 19 Tolkyneftegaz -- what these companies agreed upon, what 20 kind of property structure was agreed, I have no idea. 21 So it may be that they agreed to exchange assets; maybe 22 they agreed that the gas will be supplied in some other 23 way. That's something that is part of their negotiation 24 process. 25 But at the moment when the ministry wrote its</p> <p style="text-align: center;">Page 157</p>	<p>17:01 1 a letter addressing it to a head of the administration, 2 naturally the head of the administration will forward 3 this letter. He has no choice; he has to forward it to 4 some related state authorities. 5 So I cannot agree with you that the administration 6 made an order. The administration cannot issue such 7 an order. Sorry for that. 8 But I forgot the second part of your question while 9 I was giving you a comment on the first part of your 10 question. 11 Q. The question, sir, is: isn't it clear from C-294, which 12 is a letter, again, sent by your ministry to the 13 Ministry of Energy and Trade, that consideration, as at 14 September 2009, was being given within the Government of 15 Kazakhstan to taking the assets of Tolkyneftegaz from 16 my clients and giving them free of charge to KaspiyAzot? 17 A. Well, I don't know what is meant under "free of charge 18 transfer"; and, as you can see, the Ministry of Mineral 19 Resources and Energy says that this is impossible, 20 impossible for any state authority, without decision by 21 Tolkyneftegaz itself. 22 What was the subject-matter of the agreement, since 23 this letter is a reaction to a suggestion or proposal 24 which came from akim of the region, akim of the region 25 which is trying to establish a plant producing</p> <p style="text-align: center;">Page 159</p>
<p>17:00 1 letter, this is the ministerial position, and you 2 underlined it in the next -- in the third paragraph. It 3 was highlighted by you, and I am reading the fifth 4 paragraph of the letter: 5 "... neither a competent body nor other interested 6 state bodies have the right ...", and so far. 7 So this is their decision. If they agree to supply 8 gas to someone this is up to them; this is not a matter 9 for the ministry. This is not up to the ministry; this 10 is not -- the Ministry of Energy -- this is not up to 11 any other authorities. 12 Q. Thank you, Minister. But clearly in the letter -- and 13 the underlining is actually not ours; it was that of 14 your executive secretary -- there had been discussions 15 within the government, including in compliance with 16 an order, apparently, no. 4489 that we've not seen from 17 the head of the Administration of the President of the 18 Republic, to discuss a free of charge transfer of TNG's 19 assets to KaspiyAzot; correct? 20 A. Well, you see, when you speak about an order, the form of 21 an order does not exist within the administration in 22 respect of the government. What can be done in respect 23 of the government, what is mandatory for the government 24 are resolutions by the Prime Minister, the directives of 25 the government. And if the head of the region writes</p> <p style="text-align: center;">Page 158</p>	<p>17:03 1 fertilisers in the region, so it would be most logical 2 to ask Tolkyneftegaz what was the subject-matter of their 3 agreement with KaspiyAzot. I am not informed of the 4 details of their agreement; the only thing I know is in 5 the end they failed to reach an agreement. 6 Q. In fact, the position of your ministry in this letter is 7 that what was at least being discussed regarding 8 a potential free of charge transfer of assets without my 9 clients' consent would be illegal under Kazakh law; 10 correct? 11 A. Well, a state authority is built in such a way that any 12 letter that you send to a state authority, even if it's 13 an inadequate letter, since this letter is registered as 14 incoming, the ministry has to respond to this letter. 15 So if you receive a letter concerning a flight to 16 the moon, the ministry would have to start its answer, 17 "Regarding the flight to the moon ...", and then to give 18 detailed explanation why it is impossible. Otherwise the 19 ministry would be considered as not answering timely to 20 incoming letters, and for that there would be some 21 officials -- some officials of the ministry would lose 22 their bonuses. 23 So we express the position of the ministry, namely: 24 what can one speak about, what does one mean 25 if there is no consent of [Tolkyneftegaz] on the matter.</p> <p style="text-align: center;">Page 160</p>

<p>17:05 1 Q. Okay. Well, the letter does concede, does it not, 2 Minister, that your ministry was -- and I am quoting 3 from, at least on the English, the next-to-last 4 paragraph at the bottom of page 1: 5 "At the same time, the Ministry has been considering 6 a possibility of an early termination of the contracts 7 with the companies. The analysis of the contracts has 8 shown that there are no direct grounds for termination 9 of contracts since there are no facts established by 10 a court evidencing a failure to fulfil the contract 11 and/or work program." 12 So your ministry was actively considering at this 13 time the potential early termination of my client's 14 contracts; correct? 15 A. Actually we, the ministry, tried to defend these two 16 companies as long as it could, and this lasted until 17 July 2010. We were actively defending them, and there 18 were no free of charge transfer of assets. 19 And frankly, if this company had sold its assets in 20 time to some large, rich investor such as Total or 21 someone else, it would be the ideal outcome for the 22 ministry because such a solid investor would make some 23 orders in their place and eliminate any social issues 24 related to it. However, this never happened. 25 And the ministry, even if akim said something or Page 161</p>	<p>17:09 1 Q. Let me ask you to look at tab 2 in your binder -2 THE CHAIRMAN: Sorry, before you move on, could I just ask 3 for some clarification. 4 Minister, you have described, in response to several 5 questions, the hierarchy between the various 6 institutions, the ministries and so on. And I am aware 7 that on tab 10, C-293, there is this mentioning of 8 an instruction that you say you are not aware of that, 9 and that didn't exist. It was an instruction which is 10 supposed to be by the Prime Minister to the ministry. 11 So if you look at that, but that's only an example. 12 If we then look at -- have you found what I'm 13 talking about? It's tab 10, the first page. You had 14 a discussion with counsel before that. In the second 15 paragraph an instruction is mentioned, with a number, 16 allegedly by the Prime Minister to the Ministry of 17 Energy and Mineral Resources, and other ministries. 18 I recall that you said you were not aware of this 19 instruction. Now, I'm not asking about that instruction 20 itself, but as an example. 21 If you then turn to tab 11, again the first page, 22 which is C-294, and look at the first paragraph, it says 23 in the English: 24 "In compliance with order no. 4489 of A Musin, the 25 Head of the Administration of the President of the Page 163</p>
<p>17:07 1 recommended something particular to develop certain 2 enterprise in his region, what we are saying is that 3 there are no grounds, and this is what you read in the 4 paragraph that you've just quoted. 5 This also confirms that there is no such conspiracy 6 theory maintained by all the state authorities. Each 7 state authority expresses their own position, and you 8 can see that these positions are not coordinated. And 9 our ministry, in this case, objects within the scope of 10 our authority; we carry out our functions. 11 Q. But you would agree that the ministry apparently was 12 not, at least initially, made aware of President 13 Voronin's letter to President Nazarbayev, and his 14 directive to his Prime Minister and to the financial 15 police, until your ministry was instructed, as one of 16 many, to commence investigations; correct? 17 A. I said that the letter of Mr Voronin, the head of the 18 state, did not reach us. This letter was forwarded to 19 the financial police, and these police carried out their 20 investigations. In the course of their investigations 21 at some point -- I don't know how late into the 22 investigations -- they came to the Ministry of Energy 23 and Mineral Resources, and from this moment we were 24 aware of the investigations carried out by the financial 25 police. Page 162</p>	<p>17:11 1 Republic of Kazakhstan ..." 2 And then it goes on from there. 3 This is a letter from your ministry. Now, from that 4 I would take it that the head of the Administration of 5 the President of the Republic has authority to give 6 orders to your ministry; I suppose that would also imply 7 that the President of the Republic himself can give 8 instructions or orders to the ministry. But on the 9 other hand, you said certain decisions can only be taken 10 by the Council of Ministers. 11 So I am trying to find out: who can, in the 12 hierarchy, instruct whom? Who can give orders to whom? 13 Could you enlighten us a bit on that? 14 A. Well, the akim of a region can write a letter to the 15 Prime Minister or, for example, to the head of the 16 presidential administration, and both react somehow to 17 this letter. They may tell the ministries to look 18 carefully into the substance of this letter. 19 But it is not an order, in my understanding; it is 20 just a reaction to a letter. An order has clear status: 21 it is, for example, a directive from the Prime Minister, 22 and he alone may sign this as his directive, and the 23 ministers are obliged to carry out such directive. It 24 is not necessarily a reaction to a letter or something; 25 it is just a directive, an order from the Prime Page 164</p>

17:13 1 Minister.

2 Then there are also decisions of the government, on
 3 more serious issues. It is not correspondence; it is
 4 a decision taken by the government for which the members
 5 of the government have voted. And it is to be carried
 6 out also unconditionally, without further discussions.

7 Now, with respect to the ministers, the head of the
 8 presidential administration has no authority to issue
 9 directives or instructions. But it is also obvious that
 10 the head of the presidential administration may perform
 11 his duties not necessarily through instructions to
 12 ministers. A minister is a member of the cabinet headed
 13 by the Prime Minister.

14 THE CHAIRMAN: Thank you very much, so far.

15 Now, if we look again at tab 11, Exhibit C-294, the
 16 first paragraph. You will recall that I read it out at
 17 the beginning. There your own ministry says there was
 18 an order 4489 by A Musin, the head of the Administration
 19 of the President of the Republic.

20 So there your ministry seems to accept that the head
 21 of the Administration of the President of the Republic
 22 can issue orders to a ministry. Is that a correct
 23 understanding?

24 A. If we read this paragraph in its entirety, "in
 25 compliance with the instructions" probably is more

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17:15 1 proper. Let's say it's not "order" but "instructions"

2 of the head of the administration, in addition to the
 3 letter of the akim of Mangystau region.

4 So it was akim who addressed the head of the
 5 administration, so there must be instructions to someone
 6 to review the letter of the akim, and here are
 7 instructions to the ministry to review this letter by
 8 the akim. We do it, but if we take some decision on the
 9 basis of this letter, it will not be the decision of the
 10 head of the presidential administration; it will be
 11 a decision taken by the government.

12 THE CHAIRMAN: Well, yes. Do I understand then correctly
 13 that even if the English word "order" is not correct,
 14 and we accept "instruction", that an instruction to look
 15 into a matter will have a number, like 4489, so that it
 16 is orderly administered; but that it is not mandatory
 17 for the ministry to follow whatever is in there?

18 A. It is not mandatory to perform exactly what is stated
 19 there. When the head of a region addressed the head of
 20 the presidential administration, the head of the
 21 administration forwarded this letter to certain
 22 agencies, and it may well happen that the head of the
 23 region may be wrong. But still we are obliged to
 24 discuss this letter together, and I am not in the chain
 25 of command under the head of the region. In 90% of

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17:17 1 cases probably I don't agree with the heads of regions

2 on certain issues.

3 But to discuss some issue together with the akim, if
 4 it is an essential matter for the region, social issues
 5 are involved, matters of employment, and so on, I am
 6 obliged to look into this and assist them as far as
 7 possible.

8 THE CHAIRMAN: Alright.

9 Now, I take it from what you said before that the
 10 Prime Minister can issue orders to the ministries.

11 A. Yes.

12 THE CHAIRMAN: May I also take it that the President of the
 13 Republic may issue orders to the ministries?

14 A. Yes.

15 THE CHAIRMAN: Okay. I think that's all I need to know.
 16 Thank you very much.

17 MR SMITH: Let me have you, Minister, look at Exhibit C-23,
 18 which is tab 2 in your binder. My first question to you
 19 is whether you have seen this document, including its
 20 attachments, before today.

21 A. Yes, I've seen it.

22 Q. When do you recall first seeing this?

23 A. I don't remember exactly, but it was a long time ago.
 24 The fact is that this document, its author visited me
 25 during my reception hours, came to reception to visit

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17:19 1 me.

2 Q. Did he visit you in connection with the subject-matter
 3 of this letter?

4 A. Not exactly. In fact, I was told that Mr Andreyev was
 5 asking to be received by me, and I was told that he was
 6 the former director of Tolkyn or Kazpolmunay, and
 7 I thought it necessary to receive him. And the author
 8 of this letter came together with Mr Andreyev.

9 Q. Okay. So both Mr Andreyev as well as Mr Zaharov visited
 10 you; correct?

11 A. Yes.

12 Q. And what was the substance or subject-matter of that
 13 meeting?

14 A. In fact they showed me this letter, which seemed to me
 15 not serious. But I hoped that probably Mr Andreyev
 16 wanted to propose something, being a former director of
 17 Tolkyn, to settle the situation somehow. But I didn't
 18 really understand what they wanted.

19 Q. In the letter on page 1 it indicates in the fourth
 20 paragraph in English, and I believe -- yes, the fourth
 21 paragraph:
 22 "The suggestion offered for discussion may resolve
 23 the question of nationalization of the assets posed in
 24 2008."
 25 Do you see that?

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<p>17:22 1 A. Yes, I see.</p> <p>2 Q. Do you recall in your discussion with Mr Zaharov and</p> <p>3 Mr Andreyev a discussion of the potential</p> <p>4 nationalisation of the assets of KPM and TNG?</p> <p>5 A. In my view, as I understood, they had some divergences</p> <p>6 with the management or shareholders of Tolkyneftegaz</p> <p>7 and Kazpolmunay, and they wanted to solve some financial</p> <p>8 issues of their own, and for some reason they believed</p> <p>9 that the government may be interested in their services.</p> <p>10 And they had a very peculiar understanding of</p> <p>11 legislation, nationalisation and so on.</p> <p>12 So I think probably not Mr Andreyev but Mr Zaharov</p> <p>13 was a person far removed from the facts of real life.</p> <p>14 Q. Let me go back. I appreciate that. Let me go back to</p> <p>15 my question, which was: do you recall a discussion of</p> <p>16 their suggestion that there had been a question of</p> <p>17 nationalisation of Mr Stati's assets that had been posed</p> <p>18 by the government in 2008?</p> <p>19 A. In actual fact, even at that time, I didn't have any</p> <p>20 particular desire to speak seriously to these people,</p> <p>21 because who are they? Why did they write something</p> <p>22 about nationalisation? There was no reason to discuss.</p> <p>23 Having read the first page of this letter, I didn't even</p> <p>24 continue, I didn't finish its reading, and that was -25 I just bid them</p> <p>goodbye.</p> <p style="text-align: center;">Page 169</p>	<p>17:27 1 A. I wouldn't conceal that before my trip to Paris, looking</p> <p>2 through the documents, I discovered that they were</p> <p>3 linked, presented together. In what way or how this</p> <p>4 personal instruction came into the possession of</p> <p>5 Mr Andreyev or Zakharov, I have no knowledge.</p> <p>6 Q. Let's talk for a moment about the personal instruction</p> <p>7 itself. Do you recall receiving this personal</p> <p>8 instruction from President Nazarbayev with respect to</p> <p>9 KPM and TNG?</p> <p>10 A. One may say: yes, I do remember.</p> <p>11 Q. And in particular, you were charged, along with</p> <p>12 Mr Massimov and Mr Kulibayev, with addressing the first</p> <p>13 issue in that personal instruction; correct?</p> <p>14 A. Yes. As I said, I remember this. The President as well</p> <p>15 as the Prime Minister visit all the areas of the country</p> <p>16 twice a year, and he visited the Mangystau region. As</p> <p>17 I understand, he did not visit Tolkyne specifically.</p> <p>18 However, Mr Kuserbayev, the akim of the region, as</p> <p>19 a person interested in normal functioning of enterprises</p> <p>20 in the region and responsible for the social atmosphere</p> <p>21 in the region, drew the attention of the head of state</p> <p>22 to the problems that existed at Tolkyne enterprises and</p> <p>23 Kazpolmunay.</p> <p>24 Q. And -- sorry, continue.</p> <p>25 A. And the head of state instructed Messrs Massimov,</p> <p style="text-align: center;">Page 171</p>
<p>17:24 1 Q. Did you respond to the letter?</p> <p>2 A. Honestly speaking, we must reply to every letter, so</p> <p>3 probably something was replied. But even if there was</p> <p>4 a response, it must have been just a very formal reply.</p> <p>5 But maybe there was even no reply at all, because in my</p> <p>6 view this was something outlandish, inadequate.</p> <p>7 Q. Appended to the letter is a personal instruction from</p> <p>8 President Nazarbayev dated November 19th 2009; do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this personal instruction from</p> <p>12 President Nazarbayev being appended to the letter</p> <p>13 provided to you by Mr Zaharov and Mr Andreyev?</p> <p>14 A. Unfortunately, exactly because I did not complete</p> <p>15 reading of this letter, I failed to see this attachment.</p> <p>16 Because this is something absolutely unrelated to</p> <p>17 Zaharov's letter, instruction, and I can't say anything</p> <p>18 else but something stolen, extracted by someone -19 probably Mr</p> <p>Andreyev -- from somewhere and attached to</p> <p>20 Mr Zaharov's letter. So these two documents, if the</p> <p>21 first one may be called a document, are totally</p> <p>22 unrelated.</p> <p>23 Q. But you don't deny that they were attached to</p> <p>24 Mr Zakharov's letter; you just question the source of</p> <p>25 that information?</p> <p style="text-align: center;">Page 170</p>	<p>17:29 1 Kulibayev and Mynbaev to look into these issues, and</p> <p>2 from that moment of course we were working quite closely</p> <p>3 with this issue.</p> <p>4 Q. Midway down the paragraph, the issue that's described</p> <p>5 is:</p> <p>6 "The governor of the region K Kuserbayev reported</p> <p>7 that as a result of inspections by law enforcement body</p> <p>8 it took place a full stop of trades (oil and gas</p> <p>9 extraction) and the construction of the Gas Refining</p> <p>10 Factory, compressor stations and gas gathering units.</p> <p>11 Nearly 3 thousand people are fired, that leads to</p> <p>12 conditions for social tension. Why is it necessary to</p> <p>13 stop the production?"</p> <p>14 Do you see that?</p> <p>15 A. Yes, I am reading.</p> <p>16 Q. Do you agree that the interruption of the construction</p> <p>17 of what is referred to here as a "gas refining factory",</p> <p>18 and the interruption of oil and gas extraction was</p> <p>19 occasioned by inspections by law enforcement bodies?</p> <p>20 A. Obviously a short instruction cannot trace all the</p> <p>21 cause-and-effect relations. Very short and</p> <p>22 comprehensive instructions may contain certain imprecise</p> <p>23 moments.</p> <p>24 But the fact is that there were problems in the</p> <p>25 fields, mentioned here by the head of state, who</p> <p style="text-align: center;">Page 172</p>

17:31 1 requests that some urgent measures be taken, in one way

2 or another, so that the social issues be addressed, so

3 that the relations with the investor be settled somehow.

4 And you asked me a question from which you infer

5 a cause-and-effect relation between the inspections by

6 the law enforcement bodies and the problems. We have

7 a different vision of the cause-and-effect relationship,

8 because the fact that the head of state gives

9 an instruction here to look into these issues and

10 resolve it, this was the starting point for our work.

11 As you know, even after this instruction, the actual

12 termination of the contract happened only eight months

13 afterwards. So throughout this period attempts were

14 being made to find a solution.

15 Q. If you know, why is Mr Kulibayev being charged with

16 responsibility for this issue, along with yourself and

17 Mr Massimov?

18 A. I don't know this. But I think that probably at that

19 time Mr Kulibayev was the head of Samruk-Kazyna.

20 Q. What does his role as the head of Samruk-Kazyna have to

21 do with the issues that are presented in

22 President Nazarbayev's instruction?

23 A. The fact is that the national oil company is part of

24 Samruk-Kazyna.

25 Q. So as of the date of this instruction, the national oil

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17:36 1 THE WITNESS: Thank you very much.

2 (5.36 pm)

3 (The hearing adjourned until 9.30 am the following day)

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17:33 1 company was looking into the potential for acquiring,

2 one way or another, the assets of TNG and KPM; correct?

3 A. If these issues were not resolved, then the national

4 company, or any other potential investors, would be able

5 to look into the possible acquisition.

6 MR SMITH: That's fine.

7 THE CHAIRMAN: Obviously the question is: how much longer

8 will you take?

9 MR SMITH: I may be completed. I am just looking at my

10 notes.

11 THE CHAIRMAN: Right. (Pause)

12 MR SMITH: We pass the witness.

13 THE CHAIRMAN: Okay. Thank you very much. Any questions in

14 re-direct to the minister?

15 DR NACIMIENTO: No questions, thank you.

16 THE CHAIRMAN: Thank you. Any questions from my colleagues?

17 MR HAIGH: No, thank you.

18 THE CHAIRMAN: Any questions from you, Sergey?

19 PROFESSOR LEBEDEV: No.

20 THE CHAIRMAN: Alright. No questions from me.

21 So thank you very much for your patience. This is

22 the end of the testimony.

23 Obviously it is the end of our hearing today, so we

24 continue with the next witness tomorrow at 9.30. Have

25 a good evening.

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