

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 4 Thursday, 4th 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.

Transcript produced by Trevor McGowan The Court Reporter Ltd
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ALSO APPEARING

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GANI BITENOV, Chief Expert of the Department of Protection of State Property Rights of the Ministry of Justice PROFESSOR MARTHA BRILL OLCOTT, Carnegie Endowment for International Peace

FOR THE TRIBUNAL

KATHERINE SIMPSON, Secretary to the Tribunal

INTERPRETERS

ALEXANDRE TCHEKHOV, Russian-English Interpreter

NATALY HOLM, Russian-English Interpreter

<p>09:30 1 Thursday, 4th October 2012</p> <p>2 (9.34 am)</p> <p>3 (A discussion took place off the record)</p> <p>4 (9.35 am)</p> <p>5 MR HERVE CHAGNOUX (called)</p> <p>6 THE CHAIRMAN: Good morning, Mr Chagnoux. You will, I take</p> <p>7 it, also testify in Russian?</p> <p>8 THE WITNESS: No, in English.</p> <p>9 THE CHAIRMAN: In English, good.</p> <p>10 Mr Chagnoux, you have perhaps seen that we ask every</p> <p>11 witness to give us a declaration at the beginning.</p> <p>12 Could you read it out in English to us, please?</p> <p>13 THE WITNESS: Okay, so I will read that. I am aware that in</p> <p>14 my testimony I will have to tell the truth and nothing</p> <p>15 but the truth. I am also aware that if I do not comply</p> <p>16 with this obligation, I may face severe legal</p> <p>17 consequences.</p> <p>18 THE CHAIRMAN: Thank you very much. Respondent, please.</p> <p>19 DR NACIMIENTO: Thank you, Mr Chairman.</p> <p>20 (9.35 am)</p> <p>21 Direct examination by DR NACIMIENTO</p> <p>22 Q. Mr Chagnoux, you have in front of you your witness</p> <p>23 statement? Is there anything that you would like to</p> <p>24 add, or would you like to confirm your witness</p> <p>25 statement?</p> <p style="text-align: center;">Page 1</p>	<p>09:38 1 process, where we received a phone call and then</p> <p>2 a teaser by the team of Renaissance Capital, proposing</p> <p>3 us producing assets in Kazakhstan. Of course, we would</p> <p>4 be keen to development our business in Kazakhstan, and</p> <p>5 we were interested.</p> <p>6 So the next step was to discuss the confidentiality</p> <p>7 agreement, and we were explained in the process that we</p> <p>8 were to make a non-binding offer to continue in the</p> <p>9 process. So we had a teaser; we had, after the</p> <p>10 confidentiality agreement, the info memo. All this is</p> <p>11 quite standard when an M&A bank runs a process. And in</p> <p>12 September 2008 we sent a non-binding offer with a amount</p> <p>13 of \$900 million. That was basically based on the</p> <p>14 information we had in the info memo of Renaissance</p> <p>15 Capital, because otherwise we knew very little about</p> <p>16 these assets.</p> <p>17 And then I remember that the negotiator in charge,</p> <p>18 Louis Caillard, had a hard time with Renaissance Capital</p> <p>19 because he was told that \$900 million would not be</p> <p>20 sufficient for us to be allowed to have access to the</p> <p>21 data room, and that Total had to redo another</p> <p>22 non-binding offer or to be out of the process.</p> <p>23 So vis-a-vis our management it was very unpleasant,</p> <p>24 and I remember that Louis Caillard was very upset at</p> <p>25 Mr Rusinov. There has been a very unpleasant telephone</p> <p style="text-align: center;">Page 3</p>
<p>09:36 1 A. All in all, of course I will confirm the witness</p> <p>2 statement. There is a detail that I have to amend.</p> <p>3 Checking in our files last week, I realised that the</p> <p>4 meeting in Paris, what is called the management</p> <p>5 presentation with Total, is mentioned as taking place in</p> <p>6 February 2009, and actually in our record it was held on</p> <p>7 March 26th 2009.</p> <p>8 Q. Thank you. Could you explain briefly your background</p> <p>9 and your current position?</p> <p>10 A. My background by training, I was trained in economics,</p> <p>11 law. And all my career has been with oil companies:</p> <p>12 first with Exxon, then I joined Total in 1980, and all</p> <p>13 the rest of my career has been with Total in</p> <p>14 a negotiation and business position. I've been a new</p> <p>15 ventures negotiator for many years.</p> <p>16 Since 2006 I am the head of what we call the new</p> <p>17 ventures and asset management division, where we have</p> <p>18 20 negotiators trying to develop our E&P business</p> <p>19 worldwide.</p> <p>20 Q. Thank you.</p> <p>21 You described in your witness statement Total</p> <p>22 participated in the so-called phase 1 of Project Zenith</p> <p>23 for the sale of KPM and TNG. Could you describe that</p> <p>24 for us?</p> <p>25 A. Yes. At the beginning it started like a very usual</p> <p style="text-align: center;">Page 2</p>	<p>09:40 1 discussion. And eventually, early October, we have</p> <p>2 replaced our first letter with \$900 million by another</p> <p>3 letter with US\$1,000 million, \$1 billion altogether.</p> <p>4 Q. And the basis for making such indicative offer, what was</p> <p>5 that?</p> <p>6 A. I mean, the basis of an indicative offer is the first</p> <p>7 assessment you can have on the value of those assets,</p> <p>8 based on the information that was provided by</p> <p>9 Renaissance Capital in the info memo, which was, I don't</p> <p>10 know, a 100-page document, something like that, with</p> <p>11 figures about the assets.</p> <p>12 Q. And is this sufficient to make a fair market evaluation?</p> <p>13 A. No, it's -- I mean, our letter was very clear that it</p> <p>14 was a preliminary estimate and that it was based on the</p> <p>15 information provided by the seller.</p> <p>16 It's not an unusual process. When you are an M&A</p> <p>17 bank and that you are in that process, you want to</p> <p>18 screen the companies to make sure that you don't waste</p> <p>19 time with small companies or with junior negotiators who</p> <p>20 just want to push something without the support of their</p> <p>21 management. So asking for a non-binding offer with</p> <p>22 a large amount of money to make sure that you are really</p> <p>23 going to work on this opportunity, it's not unusual.</p> <p>24 What was very unusual was that after sending</p> <p>25 a letter with a big figure like \$900 million, we were</p> <p style="text-align: center;">Page 4</p>

09:42 1 told that this was not sufficient, and that we had to

2 increase the amount if we wanted to be kept in the

3 process. This is ... is strange.

4 Q. And to be kept in the process, also to have access then

5 to the data room?

6 A. Yes, that was the purpose of all this.

7 Q. Generally, in your experience, indicative offers, are

8 they representative of the market value?

9 A. They are normally rather high, because obviously you

10 want to be selected to continue in the process. It

11 means that you are -- you have a real interest in the

12 business opportunity, but you are rather giving a high

13 figure in the upper range of the possible range of

14 values to continue with the process.

15 This is why we were so surprised to be told that

16 \$900 million was not sufficient: we were in the upper

17 range of our estimate. And with the information we had,

18 the information provided by the seller. Normally when

19 you have access to the data room, you will not see only

20 the bright side; you will see also the defects, the

21 weakness, and very often you will lower your estimate.

22 Q. So what is the difference between the memorandum

23 received by Renaissance Capital and the data room?

24 A. The difference, to make it short, because it's

25 complicated, is that you have some kind of comprehensive

Page 5

09:43 1 information in the info memo -- you will have an idea of

2 the reserves, you will have the number of wells, you

3 will have projection of production, of cost -- and when

4 you are in the data room, you have access to the whole

5 data; that is to say, you will see the seismic data, you

6 will see the data of the wells, and then you can do

7 a real technical evaluation. Instead of working on

8 a global indication, you can have access to the very

9 facts, the scientific figures.

10 Q. And then you also took part in the second phase of the

11 Project Zenith?

12 A. Yes, and which was unusual again is that normally the

13 bankers will push you to move very fast, so normally

14 this process would take two months and the bank would

15 keep you under pressure all the time, and in the year

16 2008 the process suddenly stopped.

17 So we didn't know what was happening. We were

18 a little bit -- it was uncertain. We had access to the

19 data room only in February the following year, when we

20 understood the seller has decided to restart the

21 divestment process.

22 Q. And did you make an offer, a firm offer, in the second

23 phase?

24 A. We never made a firm offer and we were never in

25 a position to do that.

Page 6

09:45 1 Q. Why's that?

2 A. We have a very sequential process in Total, and

3 I suppose that most of the oil and gas companies our

4 size have the same. We have to complete your technical

5 evaluation and then your own economics. You include all

6 the financial, tax elements.

7 And then it takes some kind of internal committee

8 review to firm up your assessments and to have the

9 blessing of the management before you make a firm offer,

10 because even if a firm offer can still be subject to

11 board approval, can be subject to executive committee

12 approval -- in our case it would be executive committee

13 approval -- you are committed. So you don't do that at

14 a technical level; you do that after management

15 blessing.

16 And our technical evaluation never reached the point

17 where we would have had a firm recommendation of the

18 geoscientists to move forward.

19 Q. And that was the reason for not making a binding offer?

20 A. Yes, that was the reason.

21 Q. Can you explain Total's considerations regarding the

22 Tabyt block? I will show you Exhibit C-710. This is

23 an email of your colleague Philippe Mallard. Could

24 explain the meaning of this email?

25 A. Yes, I can explain -- you know, I'm not a geophysicist,

Page 7

09:47 1 I am not a geologist; I am a businessperson. So I will

2 not go into the geotechnical science details. But I was

3 surprised to see this email coming in the discussion,

4 but it's very useful.

5 When you evaluate such a business opportunity, you

6 are trying to find out where you will make value, where

7 you can add value, where you will make a profit. If you

8 buy for 1 billion something that is worth 1 billion, you

9 make no profit; you have no driver to make the deal.

10 And after a review of the producing assets, Borankol

11 and the other one, we were left with the idea that

12 Tolkyn and Borankol were not so good and where we would

13 not improve our evaluation. It happens sometimes that

14 on existing reserves and producing assets you will feel

15 that you create value, that you can do better, that you

16 will find more reserves, that you can use another

17 technique to produce and increase the production. It

18 was not the case.

19 And when you have the signature of Philippe Mallard

20 at the bottom of the mail, Philippe Mallard is in charge

21 of exploration. We have two geoscientists in this deal:

22 Bernard Lebon in charge of existing field, producing

23 reserves, and he had given up be already the process,

24 for him it was -- he was in standby; and

25 Philippe Mallard for a while had a dream that maybe the

Page 8

09:49 1 exploration licence Tabył could have a huge structure.

2 So he has worked hard on that on the seismic data.

3 What you have here, it's not the first mail; there

4 has been another mail at least of Philippe Mallard

5 discussing with Radu Constantin. And what you have here

6 at the end is the conclusion that he cannot justify his

7 dream of a huge exploration target. Basically he is

8 saying here that maybe a reef structure exists, but the

9 reliability should be investigated, which is a polite

10 way to say that he has doubts.

11 And the main killing factor is that closure is not

12 controlled and is outside of the seismic data we have.

13 Or if we have a trap with big hydrocarbon reserves, you

14 have to be comfortable with the seismic data that this

15 trap is closed. Otherwise the hydrocarbons have

16 escaped, and the risk is too long.

17 And this is what we see -- what he says:

18 "- we do see a strong risk associated with the top

19 seal. We map faults crossing the Permian-carboniferous

20 section ..."

21 So basically he is explaining to Radu Constantin

22 that his dream of a huge exploration target is

23 vanishing, and that unless Radu Constantin can provide

24 more data to support the possibility, he will not

25 recommend that to the exploration management.

Page 9

09:52 1 A. Yes, this is what I explained: we spent a first letter

2 with a \$900 million figure, and we sent a revised letter

3 with the same date, but it was sent only on October 6th,

4 with an amount increased by \$100 million.

5 Q. Thank you. And that first letter is attached to your

6 witness statement, isn't it?

7 A. Yes.

8 Q. Could you please turn to that letter. The last

9 paragraph on the first page of the letter indicates that

10 the \$900 million purchase price is broken down:

11 US\$170 million for the value of the Borankol field;

12 US\$730 million for the value of the Tolkyn field. Is

13 that correct?

14 A. This is what I read.

15 Q. And you broke it down that way because that was how the

16 bidding instructions of the process instructed you;

17 correct?

18 A. Yes.

19 Q. If you turn to the next page at the top, the first

20 sentence on that page says:

21 "Without information on the real available market

22 for processing, the LPG plant has not been given

23 a value."

24 Right?

25 A. Mm-hm.

Page 11

09:50 1 Q. And after that, you left the project?

2 A. For me, this is the technical end of the project. It

3 was in June. And in July we sent a more formal letter

4 to the bank to put an end to the story. But when I read

5 this email, I remember very well that the last chance of

6 this business opportunity was exploration, and really

7 for a while Philippe Mallard had a dream of something

8 really big, and at that stage this possibility

9 disappears.

10 Q. We heard in this arbitration that Total left the project

11 after speaking with the Kazakh authorities.

12 A. We never did.

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

14 THE CHAIRMAN: Thank you very much. We come to cross.

15 (9.51 am)

16 Cross-examination by MR MOHR

17 Q. Good morning, Mr Chagnoux. Could you please turn to

18 paragraph 2.2 of your witness statement. We're also

19 handing you some documents that we'll be asking you to

20 look at throughout the course of the morning.

21 In paragraph 2.2 of your witness statement you state

22 that:

23 "On 26 September 2008, Total sent an offer in the

24 amount of USD 900 million to Renaissance Capital."

25 Right? Is that correct?

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09:53 1 Q. So this offer did not include a value for the LPG plant?

2 A. Yes.

3 Q. If you look at paragraph 3.1 of this letter, it states

4 that Total's offer did not include the Tabył block; is

5 that right?

6 A. Yes.

7 Q. So the first offer that you made in the fall of 2008 was

8 for Borankol and Tolkyn only?

9 A. Yes.

10 Q. And at that time Total was interested in purchasing

11 Tolkyn and Borankol without the Tabył block being

12 included; is that right?

13 A. Yes.

14 Q. And Total intended to finance that offer entirely from

15 Total's own resources, without resort to any external

16 financing?

17 A. Of course. That's our standard practice.

18 Q. Now, you have referenced this morning the confidential

19 information memorandum that the sellers sent to Total in

20 August 2008; correct?

21 A. Yes.

22 Q. You did not attach a copy of that information memorandum

23 to your witness statement; that's right?

24 A. No, I don't think so.

25 Q. Are you personally familiar with the contents of that

Page 12

09:55 1 document?

2 A. Not in details.

3 Q. Well, if you open the notebook that we've handed you,

4 and turn to tab 2.

5 A. This one (indicating)?

6 Q. Yes. It's Exhibit C-70. Is this the information

7 memorandum?

8 A. We have something like that in our files. I could not

9 confirm page by page, line by line, that this is what we

10 had.

11 Q. I understand. I believe the evidence in this case is

12 that this is the form of the information memorandum that

13 was sent to all of the participants. Do you have any

14 reason to dispute that?

15 A. No, no.

16 Q. And this information memorandum is 82 pages long;

17 correct?

18 A. Yes.

19 Q. I believe, as you testified earlier, that this

20 memorandum contains information about the company's

21 reserves and their finances and their operational costs

22 and history?

23 A. Yes.

24 Q. Was this information memorandum also accompanied by

25 a letter describing the bidding process?

Page 13

09:58 1 A. I've seen that recently; we had no idea at that time.

2 Q. If in fact the sellers received several other offers

3 from other buyers that were significantly higher than

4 Total's, there wouldn't be anything improper about

5 informing Total that it needed to increase its offer if

6 it wanted to be in the running, so to speak, would

7 there?

8 A. Yes, if the other buyer is of the same quality as Total,

9 it wouldn't be surprising.

10 Q. Would you consider the Korean National Oil Company to be

11 a buyer of the same quality?

12 A. Yes.

13 Q. As a buyer, wouldn't it be in your interest to know if

14 your valuation does not meet the seller's expectations

15 so that you can either decide to increase your bid or

16 move along to the next project and not waste your time

17 and money on that one?

18 A. No. We knew that we were a good buyer, we knew that we

19 were to continue. It was a big opportunity for us, and

20 we were a good buyer for the seller. So we were sure

21 that we would go to the data room and that we were to

22 continue the process. It was just irritating.

23 Q. I appreciate that, but that wasn't exactly my question.

24 My question was: as a buyer, if your top offer doesn't

25 meet the seller's expectations, wouldn't you rather know

Page 15

09:56 1 A. Yes, I suppose so. We had a bidding process.

2 Q. Turn to tab 1; that's Exhibit C-303. And again, the

3 evidence in the case is that this is the form of the

4 process letter that was sent to the participants. Do

5 you have any reason to disagree with that?

6 A. No, no reason to dispute that.

7 Q. Now, you indicated earlier in your testimony that Total

8 submitted a revised offer of US\$1 billion on

9 October 6th 2008, and that Total revised its offer

10 because Renaissance Capital demanded that figure in

11 order to have access to the data room. Is that your

12 testimony?

13 A. Yes, it is.

14 Q. There's nothing improper about a seller limiting access

15 to its data room to the highest phase 1 bidders in

16 a tender offer, is there?

17 A. It makes sense for a bank to try to screen who will

18 attend the data room. Total is a large company, we were

19 willing to pay with our own funds, we have already

20 a position in Kazakhstan, so I am convinced that we were

21 a very serious attractive potential buyer. I can see no

22 reason for Renaissance Capital to leave us out of the

23 process.

24 Q. Do you know what the other indicative offers were that

25 Renaissance Capital received in phase 1?

Page 14

09:59 1 that sooner rather than later?

2 A. Yes, in theory.

3 Q. Do you agree that it would be disingenuous and improper

4 for a bidder to make a bid that is really outside the

5 range it's willing to pay, just to gain access to

6 confidential business data?

7 A. It's the standard practice that all companies in that

8 situation, we put a reasonable offer on the table, in

9 the upper range of their evaluation. And this is what

10 we had done with 900, and we were really surprised to

11 see that 900 was not sufficient because it was really

12 the upper range, and we really had a bad feeling with

13 Mr Rusinov saying this was not sufficient. We were

14 telling him, "Look, we know what we are doing with the

15 information you have provided us. 900 is already a good

16 figure."

17 Q. That again, though, isn't my question. My question was:

18 do you agree that it would be improper for a bidder to

19 make an offer, an indicative offer, that was really

20 outside of the amount that it was willing to pay, just

21 to gain access to competitor's data?

22 A. It would be. Our offer was not outside of the range;

23 I am just saying that it was the very upper part of the

24 range.

25 Q. So \$1 billion was within the range of your evaluation of

Page 16

10:01 1 the assets, based on the information you had at the
 2 time?
 3 A. 1 billion was even higher than the upper range. We were
 4 just willing to continue the process because we felt
 5 that we could have a good surprise in the data room.
 6 But then the probability to make a deal at this level
 7 was very limited.
 8 Q. Now, the revised offer is also attached to your witness
 9 statement; correct?
 10 A. Yes.
 11 Q. Do you have the second indicative offer?
 12 A. Yes.
 13 Q. Turn to the top of the second page, please. The first
 14 line on the top of that page states that:
 15 "The price indicated above ..."
 16 That's the \$1 billion offer:
 17 "... as of 1st January 2008 [is] US\$ 170 million for
 18 the value of the Borankol field, US\$ 730 million for the
 19 value of the Tolkyn field and US\$ 100 million for the
 20 LPG plant."
 21 Correct?
 22 A. Mm-hm.
 23 Q. So you would agree, wouldn't you, that the only
 24 difference between this offer and the first offer is
 25 that you've added \$100 million for the value of the LPG
 Page 17

10:03 1 plant, right?
 2 A. Yes.
 3 Q. Turn back with me to the process letter that's behind
 4 tab 1; Exhibit C-303. And on the third page, under the
 5 heading, "Form of Indicative Offer" -- do you see that?
 6 A. Mm-hm.
 7 Q. Do you see where it says:
 8 "Your Indicative Offer should, at a minimum, address
 9 the matters set out below ..."
 10 And then under part (d) it says:
 11 "d) the breakdown of such consideration by each of
 12 the assets: Borankol field, Tolkyn field and LPG
 13 plant... "
 14 So the process letter instructed the bidders to
 15 provide a value for each of the assets, and in the first
 16 bid you do not provide a value for the LPG plant, right?
 17 A. Yes. The LPG has a negative value in our estimates.
 18 Q. In the second bid you did make an offer of \$100 million
 19 for the LPG plant, didn't you?
 20 A. I agree it was messy. We were just doing what
 21 Renaissance Capital wanted to increase the figure.
 22 Q. Well, you've also included in your witness statement
 23 a cover email that transmitted the second offer to
 24 Renaissance Capital. Can you turn to that.
 25 A. Yes.
 Page 18

10:05 1 Q This is a letter from Louis Caillard to Mr Rusinov and
 2 his colleague at Renaissance Capital, right?
 3 A Hmm.
 4 Q And Mr Caillard -- you're not copied on this email, are
 5 you?
 6 A I was not copied at that time, but I knew what was going
 7 on, and I found out this email in our records without
 8 problem.
 9 Q Okay. And the email says that:
 10 "Following your communication of last Friday, please
 11 find attached a corrected non binding Offer for
 12 Zenith Project including a valorisation of the LPG plant
 13 as per Infomemo."
 14 Right?
 15 A Hmm.
 16 Q So were you -- was the communication that Mr Caillard
 17 references in this email, the communication from RenCap,
 18 a phone call or an email?
 19 A There has been several phone calls.
 20 Q Were you a party to those phone calls?
 21 A No.
 22 Q So you don't actually know firsthand what
 23 Renaissance Capital told --
 24 A I just remember very well Louis Caillard being very
 25 angry at the situation because after getting management
 Page 19

10:06 1 approval to send a non-binding offer with a high amount
 2 of 900, it was difficult to go back to the management
 3 telling people: it was a high figure but it's not
 4 considered as sufficient, and we have to send a higher
 5 figure or to stop the process.
 6 Q . Well, Mr Caillard does not reference in his transmittal
 7 email anything about complying with a \$1 billion
 8 threshold to gain access to the data room, does he?
 9 A I suppose that "Following your communication of last
 10 Friday" exactly means that: I have been told that
 11 without \$1 billion we are out, and we are providing you
 12 with what it takes to continue the process.
 13 Q But you weren't a party to that communication; correct?
 14 A I was not in the phone call. And I had Louis Caillard
 15 twice a day in my office complaining about Mr Rusinov;
 16 this I remember very well.
 17 Q And Mr Caillard's email only references, as the reason
 18 for submitting an increased offer, "including
 19 a valorisation of the LPG plant as per Infomemo";
 20 correct?
 21 A Yes.
 22 Q . So are you saying that there was some other reason for
 23 the increased offer that Mr Caillard just didn't include
 24 in his explanation?
 25 A . There is only one reason we know. The reason was that
 Page 20

10:07 1 without increasing our figure, we were not given access

2 to the data room.

3 Q. Was he being dishonest about the reasons why Total was

4 submitting a higher offer?

5 A. You know, when you say to somebody, "Following your

6 communication of last Friday", for me it means very

7 simply that you have asked for something and you get it,

8 and you get it because we want to have access to the

9 data room. We are the serious buyer, we want to

10 continue to assess this opportunity, and although you

11 make things more difficult, we are trying to continue in

12 this process.

13 Q. Did you state earlier that you believed at the time that

14 the LPG plant had a negative value?

15 A. Yes.

16 Q. So were you being dishonest by stating in your offer

17 that you were offering \$100 million for the LPG plant?

18 A. To a certain extent, yes.

19 Q. Thank you.

20 A. Another way to say that was that we would have found it

21 outrageous to increase the figure on the other elements.

22 So the only face-saving solution was to put value on the

23 LPG plant.

24 Q. You testified earlier that you subsequently learnt about

25 the other indicative offers that Renaissance Capital

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10:09 1 Total?

2 THE CHAIRMAN: It's part of the preparation. We are not in

3 US courts or UK courts; we are in international

4 arbitration, as I mentioned. So it is up to the

5 Tribunal to draw such lines, and I would personally feel

6 as well that the discussions between counsel and the

7 witness are confidential.

8 MR MOHR: Have you had access to other materials, in the

9 course of preparing for your testimony, that you

10 received from counsel?

11 A. No.

12 Q. But you do recall being provided by counsel the

13 information regarding the other indicative offers that

14 the sellers received in the first phase of --

15 DR NACIMIENTO: Again, Mr Mohr, I think we have covered

16 this.

17 MR MOHR: Well, I believe that the information that he

18 received from the state's counsel, particularly

19 information that was subject to a confidentiality

20 agreement, is fair game.

21 THE CHAIRMAN: I'm sorry, I must admit in this particular

22 case I'd like to hear you again on this. And maybe

23 I have to consult my colleagues, but I'm not so sure

24 about that. So perhaps rephrase your question, and then

25 we will see whether you still object; and if that is so,

Page 23

10:08 1 received in the Zenith process. How did you learn about

2 those?

3 A. When we prepared for this arbitration today, I had to

4 read some documents to comment, and in those documents

5 I found the figures of the other companies.

6 Q. Are you talking about meetings with counsel for the

7 respondent?

8 A. Hmm?

9 Q. Are you talking about meetings now with counsel for the

10 respondent?

11 A. Yes.

12 Q. When did those meetings occur, meeting or meetings?

13 A. Last week.

14 Q. And what documents did counsel show you?

15 A. I could not be very precise with that. I've seen pages

16 where some elements were given and where I was asked to

17 comment on that.

18 Q. As best as you can recall, what documents did you review

19 with counsel?

20 DR NACIMIENTO: I believe you are crossing the line now.

21 MR MOHR: Crossing what line?

22 DR NACIMIENTO: The line to attorney-client privilege.

23 THE CHAIRMAN: I agree.

24 MR MOHR: What is the basis for an attorney-client privilege

25 between the state's counsel and a representative of

Page 22

10:11 1 we will deal with it. Okay?

2 MR MOHR: Yes.

3 Mr Chagnoux, you understood when Total made its

4 indicative offer to Renaissance Capital on Project

5 Zenith that its offer was subject to a confidentiality

6 agreement; correct?

7 A. Mm-hm.

8 Q. And you expected that that information would be

9 maintained in confidence?

10 A. Yes.

11 Q. You --

12 A. For a certain duration. Normally in a confidentiality

13 agreement you have a three-year time period.

14 Q. You have been provided access by the respondent's

15 counsel to confidential offers that were made by other

16 participants in Project Zenith; is that right?

17 DR NACIMIENTO: I object to this question.

18 THE CHAIRMAN: Well, the witness has said himself that he

19 became aware of the figures. I don't recall that he

20 said, "I saw the documents," but he became aware of the

21 figures in contact with counsel. So I think it is

22 proper for you to follow on that.

23 MR MOHR: I think I can move on.

24 Please turn to paragraph 2.4 of your witness

25 statement. In paragraph 2.4 you reference that there

Page 24

10:12 1 was a management presentation regarding the project in
 2 February 2009, and I understand that you've corrected
 3 that now in your testimony to March 2009, right?
 4 A. Yes.
 5 Q. Were you present at that meeting?
 6 A. No.
 7 Q. So everything that you state in this witness statement
 8 about what occurred at that meeting is based on what
 9 you've heard from others; is that right?
 10 A. Correct.
 11 Q. Who did attend that meeting for Total?
 12 A. We had Louis Caillard, the negotiator in charge of that;
 13 we had Philippe Mallard, exploration geoscientist; and
 14 Bernard Lebon, geoscientist for existing reserves and
 15 producing fields. And maybe other experts of Total.
 16 Q. In that time period, in the spring of 2009, the project
 17 included the Tabyl block; is that right?
 18 A. Yes. We had a letter sent by Renaissance Capital
 19 explaining that Tabyl was possibly included in the
 20 transaction.
 21 Q. And Tabyl block was an exploration block?
 22 A. Yes, it is.
 23 Q. Unlike the Borankol and Tolkyk blocks, which were at the
 24 time already producing fields, right?
 25 A. Correct.

Page 25

10:14 1 Q. You state in paragraph 2.5 of your witness statement
 2 that:
 3 "After consideration of the available additional
 4 information, [Total was] very disappointed both with the
 5 data regarding the existing field production (for the
 6 Borankol field) and with the potential for additional
 7 reserves."
 8 The "potential for additional reserves" refers to
 9 the Tabyl block, right?
 10 A. No. No, no.
 11 Q. No?
 12 A. They refer to how you could increase the reserves of the
 13 existing field. Sometimes you feel that you will find
 14 a deeper horizon with more reserves, or that with
 15 enhanced recovery techniques you can increase the
 16 recoverable reserves of the existing fields.
 17 Q. Your disappointment regarding existing field production
 18 was limited to Borankol?
 19 A. Probably both. We knew at that stage that on both
 20 fields we were not going to do any better than was
 21 already existing.
 22 Q. Well, in paragraph 2.5 you specifically reference the
 23 Borankol field in reference to disappointment with
 24 existing data production; correct?
 25 A. Yes.

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10:15 1 Q. Turn to tab 3 in your binder, which is Exhibit R-41.4.
 2 This is a letter that you sent to the Ministry of Oil
 3 and Gas on 23rd August 2011; correct?
 4 A. Mm-hm.
 5 Q. In this letter you also purport to explain the reasons
 6 why Total decided not to make a binding offer in the
 7 project, right?
 8 A. Yes.
 9 Q. If you go down to the first paragraph after the indented
 10 block, it begins:
 11 "When we had access to more information, we have
 12 been very disappointed, both with the data regarding the
 13 existing field production (Borankol) and with the
 14 potential for additional reserves."
 15 Right?
 16 A. Hmm.
 17 Q. So again in this letter you emphasise that the
 18 disappointment with existing field production was
 19 limited to Borankol?
 20 A. Yes.
 21 Q. As we established earlier, Total's original offer of
 22 \$900 million was broken down into \$730 million for
 23 Tolkyk and \$170 million for Borankol, right?
 24 A. Yes.
 25 Q. So you would agree that over 80% of the value of that

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10:16 1 offer was attributable to the Tolkyk field, right?
 2 A. Yes.
 3 Q. And the potential for additional reserves from Tabyl was
 4 not a part of that original offer?
 5 A. Mm-hm.
 6 Q. What was Total's disappointment with the existing
 7 production at Borankol?
 8 A. It's -- you know, when you are looking at a business
 9 opportunity, you are, as I was explaining, trying to
 10 find where you will find value that is important for
 11 you, and that maybe has been neglected by the seller,
 12 where you could find some kind of win/win solution where
 13 what is of limited value for the seller has more
 14 interest for you.
 15 Obviously what you can read here is that on Tolkyk
 16 field there is the idea that there is not much to be
 17 done. So it's more on Borankol field that for a while
 18 we expected that with additional geoscience work, with
 19 better drilling techniques, we could really increase the
 20 value. And this is where we had a margin to add value
 21 compared with the existing assets, and this is what we
 22 did not find.
 23 Q. In paragraph 2.6 of your witness statement, you say:
 24 "KPM and TNG's troubles with the Kazakh authorities
 25 did not play a role [in] our decision not to make a firm

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10:18 1 offer."

2 What troubles with the Kazakh authorities were you

3 referring to?

4 A. We have been mentioned that it could have been a reason

5 for us not to make a firm offer, and we explained that

6 our decision not to continue this opportunity was

7 entirely based on our technical assessment.

8 Q. What troubles between the sellers and the Kazakh

9 authorities were you aware of in the first half of 2009?

10 A. It was mentioned in the management presentation made in

11 Paris on March 26th -- and not in February -- that the

12 sellers were having difficulties with the authorities.

13 Q. When Total and your team is in the process of evaluating

14 a potential acquisition, do you follow the financial

15 press regarding those companies?

16 A. We have a very sequential process. I would say that as

17 long as we don't have a technical recommendation, the

18 financial and business part of the deal is not finalised

19 so fast.

20 Q. Were you aware that on December 18th 2008 there was

21 a press report stating that the MEMR had questioned the

22 title to the seller's ownership of TNG?

23 A. I couldn't be too positive about that. I am under the

24 impression that it was even mentioned by Renaissance and

25 by the seller in the Paris meeting. But for that we

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10:22 1 we would have -- we could have had the conclusion of

2 such a committee, but such committee was never held.

3 Q. Did you turn over any of those internal communications

4 or internal documents regarding this evaluation process

5 to the respondent?

6 A. I don't think we went into these details.

7 Q. Did the respondent make a request for that kind of

8 information to you?

9 A. Maybe in a general way. But I mean, we have answered

10 all that from the memory we had: that it never went very

11 far, and we knew that we were not in a position to find

12 standard official documents of Total, like we would have

13 had with a committee meeting and the conclusion of the

14 committee.

15 Q. Turn, please, to paragraph 2.6 of your witness

16 statement. In this paragraph you reference a slide at

17 the management committee meeting providing some

18 information about the "troubles" between KPM and TNG and

19 the Kazakh authorities, and then you state:

20 "... this was no longer significant for us as the

21 basic facts regarding reserves and potential production

22 were a sufficient 'killing factor' not to investigate in

23 depth the nature and impact of these claims."

24 Right?

25 A. Yes.

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10:20 1 have little memories and recollection, as it was not --

2 our attention was not focused at that time on this.

3 Q. Who was "we" that you just referred to in your last

4 answer? In your last answer you stated "our attention

5 was not focused at that time on this", and I was

6 wondering who you meant by "our attention".

7 A. "Our attention", I would mean the team in charge of

8 evaluating this matter: Louis Caillard, finance people,

9 economists. They were still waiting for the

10 geoscientists to confirm figures and to make a positive

11 recommendation.

12 Q. Did your team produce any valuation documents in

13 connection with your analysis of these --

14 A. No.

15 Q. Did you produce any due diligence, review documents, in

16 connection with this project?

17 A. No. I've seen in our records a lot of emails between

18 geoscientists. In our process we have had at some stage

19 a technical committee of geoscience, it's either

20 exploration committee or what we call DRO -- discovered

21 reserve opportunity -- committee, and this committee

22 never took place.

23 So this committee that is supposed to confirm that

24 the geoscientists make a positive recommendation to

25 progress a business opportunity was never reached. So

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10:24 1 Q. So you already knew by the time of the management

2 committee meeting that you had enough information to

3 kill the deal?

4 A. Unless the exploration target could have been justified,

5 yes. But the exploration target for Philippe Mallard

6 could have been so big that we wanted to continue this

7 part of the evaluation.

8 Q. Let's actually look at the email that counsel for the

9 state asked you about. It's also behind tab 4 in the

10 binder; that's Exhibit C-710.

11 You would agree with me that the third bullet point

12 in this email says:

13 "- closure is not very well controlled and located

14 outside of the 3D ..."

15 That refers to 3D seismic, right?

16 A. Mm-hm.

17 Q. So the 3D seismic did not did not actually cover the

18 area where the closure would be?

19 A. Mm-hm.

20 Q. Is that right?

21 A. Mm.

22 Q. Please answer audibly, "yes" or "no".

23 A. Yes.

24 Q. But it also says:

25 "... but existing 2D lines seem to indicate that the

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10:25 1 closure should exist."

2 A. Yes, I can read that.

3 Q. And then Mr Mallard goes on to ask a number of questions

4 and for more information about the block; correct?

5 A. Yes, he is asking questions.

6 Q. He doesn't actually say anywhere in this email that he

7 has concluded that the seal doesn't exist, does he?

8 A. You know, from my experience in the oil industry, when

9 I read this email, I would never take it as a good news.

10 It is polite, it is asking questions, but basically it

11 is saying: we were trying to find out a large structure,

12 and the risk appears to be too big, so unless you can

13 help us with more data, we are going nowhere.

14 Q. Please turn to paragraph 2.9 of your witness statement.

15 You reference here the allegation made by claimants

16 that:

17 "... TOTAL abstained from making a binding purchase

18 offer because of a discussion with 'Kazakh authorities'

19 after the management presentation ..."

20 And you say you are not aware of such discussion,

21 but that:

22 "It might have occurred locally in Kazakhstan with

23 personnel of our affiliate ..."

24 Do you see that?

25 A. Yes.

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10:28 1 say that no discussion took place with Kazakh

2 authorities in that respect. This is my statement.

3 Q. Turn to tab 8, please, of the binder. It's

4 Exhibit C-535. This is a press release that's on

5 Total's website announcing a heads of agreement between

6 KazMunaiGas and Total for the Khvalynskoye field; is

7 that right?

8 A. Khvalynskoye.

9 Q. And this is dated as of October 6th 2009; right?

10 A. Yes.

11 Q. On the second page this press release references that:

12 "... Total has been present in Kazakhstan [since

13 1992] with ... [a] 16.8% stake in the ... Kashagan

14 field..."

15 A. Mm-hm.

16 Q. Do you know approximately what the value of Total's

17 interest in that stake is?

18 A. I know approximately, yes.

19 Q. And can you inform the Tribunal?

20 A. I suppose that our evaluation of Kashagan field is

21 something that I consider confidential.

22 Q. Well, can you give an order of magnitude? Is it in the

23 billions?

24 A. It is in the billions.

25 Q. On the first page of this press release, it again refers

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10:26 1 Q. What affiliate are you referring to?

2 A. Total's affiliate in Kazakhstan.

3 Q. What's the name of the affiliate?

4 A. Total E&P Kazakhstan.

5 Q. What did you do to ascertain whether a discussion in

6 fact occurred between Kazakhstan authorities and others

7 in Total?

8 A. First of all I have to point out that in our

9 organisation, business development is made in Paris;

10 it's not made by affiliates. And for this kind of

11 business opportunity, that range of figures, it is

12 managed entirely by the head office.

13 I have been checking with our colleagues, with

14 people who were in Kazakhstan at that time, and I am

15 even in a better position to say that they were not even

16 aware of what was going on. They knew that something

17 was dealt with in Paris, but they were never in

18 a position to discuss that with Kazakh authorities.

19 Q. But you did not have that conversation with your

20 personnel of the affiliate before you submitted your

21 witness statement?

22 A. Yes, I had it at that time; but I could not reach

23 everybody at that time because some of the people have

24 left, they are moving, and it took me more time to

25 continue. And I am now in an even better position to

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10:29 1 to this agreement between Total and KazMunaiGas that was

2 concluded on October 6th 2009. Total had been in

3 negotiations with KazMunaiGas regarding this project for

4 some time at this point, right?

5 A. Yes, for ages. And it's continuing because, as you may

6 know, [the] Khvalynskoye negotiation is stuck in Russia,

7 and has been so for many, many years.

8 Q. Was Total in negotiations regarding that project with

9 KazMunaiGas in June 2009?

10 A. It was on a longer period. I don't have a precise

11 memory of that, because it has been so long and over

12 such a long time, with ups and downs.

13 Q. Finally, I think the last topic I'd like to address is

14 your letter to the Ministry of Oil and Gas,

15 Exhibit R-41.4, which is tab 3.

16 This letter is in response to a letter that Total

17 received from the Ministry of Oil and Gas; correct?

18 A. Yes.

19 Q. And the Ministry of Oil and Gas had requested that Total

20 provide information regarding its negotiations with the

21 sellers?

22 A. Yes.

23 Q. You acknowledged earlier that those were confidential

24 negotiations; correct?

25 A. Yes.

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10:31 1 Q. Total was not legally obligated to respond to this
 2 enquiry, was it?
 3 A. I don't know.
 4 Q. Why didn't you simply respond that the information was
 5 confidential, and not provide the information that was
 6 requested by the government?
 7 A. We thought that it was information we could share,
 8 because it was a fact that we have not continued in the
 9 process.
 10 Q. Is it Total's practice to respond to any third-party
 11 request regarding the events of its confidential
 12 negotiations?
 13 A. We were no longer in confidential negotiations; we were
 14 out of the process. We explained how we had
 15 discontinued the evaluation of the process.
 16 Q. If you were asked by this Tribunal to turn over Total's
 17 internal correspondence and documents related to its
 18 evaluation of these projects, would you have any
 19 objection to that?
 20 A. What kind of correspondence [do] you mean?
 21 Q. Your internal emails, internal correspondence regarding
 22 Total's evaluation of these assets.
 23 A. Yes, I think it would be a little bit messy to gather
 24 all that. But we would have no problem.
 25 This is what I'm telling you: these emails and all

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10:33 1 that, this is the story I'm telling you. You know, you
 2 mentioned Philippe Mallard emails. I've got more emails
 3 like that asking questions about Taby1. So we could
 4 have a more detailed image of all that. But at the end
 5 of the day it would be the same picture.
 6 Q. A final question: if asked by this Tribunal, would you
 7 also disclose all of Total's communications with the
 8 Ministry of Oil regarding this matter?
 9 A. It is here; you have it all.
 10 Q. We actually don't have the letter that Total received
 11 from the Ministry of Oil.
 12 A. Okay. We have this letter; I have no problem sharing
 13 the letter.
 14 MR MOHR: Thank you. I pass the witness.
 15 THE CHAIRMAN: Thank you. Any questions from the
 16 respondent's side at this stage?
 17 DR NACIMIENTO: I have no questions, thank you.
 18 THE CHAIRMAN: Questions from my colleagues?
 19 (10.34 am)
 20 Questions from MR HAIGH
 21 MR HAIGH: Thank you, Mr Chairman. I would like to ask
 22 a couple of questions, if I might. I am going to refer
 23 you to paragraph 2.6 of your witness statement,
 24 Mr Chagnoux; and then, keeping that in mind, look at
 25 tab 4 of the binder in front of you, which is the email

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10:35 1 of June 16th (C-710).
 2 Earlier, when you spoke of this email, you said that
 3 from your experience in the oil industry, you would have
 4 considered it bad news. Is that correct?
 5 A. Mm-hm.
 6 MR HAIGH: Please answer "yes" or "no".
 7 A. Yes.
 8 MR HAIGH: And what I'm curious about is that it seems to me
 9 that it's still keeping the door open, in the sense that
 10 it's asking for further information. Is that a --
 11 A. Yes, it was basically -- that's exactly as you say, "If
 12 you could provide us with more information overcoming
 13 our doubt, we could continue assessing this exploration
 14 target." And we were never provided that information.
 15 And probably Mallard at that time already knew that it
 16 was impossible to get this kind -- to reach this level
 17 of confidence.
 18 MR HAIGH: I don't know whether I can go along with your
 19 speculation as to what Mr Mallard was really thinking,
 20 but I see what he wrote in any event. He seemed to be
 21 keeping the door open.
 22 A. To receive more information that would reduce his
 23 doubts.
 24 MR HAIGH: Do you know how long after June 16th the door
 25 closed?

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10:36 1 A. We sent a final letter in July. So I know that in July
 2 Philippe Mallard made a final internal report explaining
 3 why the uncertainties were too high, and that he could
 4 not recommend that internally.
 5 MR HAIGH: So between March 2009 and July 2009, would it be
 6 reasonable for Renaissance or the sellers to remain
 7 hopeful that you might still change your mind or you
 8 might still be interested?
 9 A. I would say that until June it could remain
 10 a possibility that we continue with the transaction; and
 11 I would say that after mid-June, if Renaissance knew
 12 that they were not able to provide the comfort and the
 13 answers asked by Philippe Mallard, it was more and more
 14 doubtful.
 15 MR HAIGH: I know you said that you were not at the
 16 management presentation in March 2009, at the same time
 17 when you made your enquiries before submitting your
 18 witness statement. Did you understand that Mr Lebon or
 19 one of the other participants from Total indicated that
 20 they were interested in speaking to the Kazakh
 21 Government after that presentation?
 22 A. No. I read that Louis Caillard was supposed to have
 23 said that, and I've asked Louis Caillard yesterday, and
 24 he confirmed again, "I cannot remember saying that
 25 during such meeting."

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10:38 1 MR HAIGH: Alright. So does he deny it or does he just say,
 2 "I don't remember"?
 3 A. He said basically, "I can't remember saying that."
 4 MR HAIGH: Thank you. Thank you, Mr Chairman.
 5 THE CHAIRMAN: Thank you. Any questions from your side?
 6 And not from mine. So, thank you very much,
 7 Mr Chagnoux.
 8 THE WITNESS: Thank you.
 9 THE CHAIRMAN: And for us it was, of course, helpful to hear
 10 all this in English.
 11 THE WITNESS: Okay.
 12 THE CHAIRMAN: Because "lost in translation" is not only
 13 a movie! Alright, thank you.
 14 So we will have a five-minute break just to get the
 15 new witness, right?
 16 (10.39 am)
 17 (A short break)
 18 (10.47 am)
 19 MR ANDREY KRAVCHENKO (called)
 20 (Evidence interpreted)
 21 THE CHAIRMAN: Good morning, Mr Kravchenko.
 22 THE WITNESS: Good morning.
 23 THE CHAIRMAN: Would you be kind enough to read out the
 24 declaration on the table in front of you.
 25 THE WITNESS: I am aware that in my testimony I have to tell

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10:47 1 the truth and nothing but the truth, and I am also aware
 2 that if I do not comply, I may face severe legal
 3 consequences. I do confirm.
 4 THE CHAIRMAN: Thank you very much.
 5 Respondent, please.
 6 DR NACIMIENTO: Thank you, Mr Chairman.
 7 (10.48 am)
 8 Direct examination by DR NACIMIENTO
 9 Q. Mr Kravchenko, you submitted two witness statements in
 10 this arbitration. Do you confirm them, or is there
 11 anything that you would like to add or to amend?
 12 A. I confirm everything that I wrote in my witness
 13 statements, and I have nothing to add or amend.
 14 Q. Could you please describe very briefly your educational
 15 background, your professional background and current
 16 position?
 17 A. I graduated from Kazakh State University and I am
 18 a lawyer by trade. I also graduated from the Moscow
 19 Business School and obtained an MBA diploma.
 20 Prior to my graduation I worked as a secretary -- as
 21 a court clerk and enforcement officer at a court. After
 22 graduation, after obtaining my university degree,
 23 I worked as a lawyer for tax authorities, as a lawyer of
 24 a large construction holding.
 25 After that, I was invited to join the Prosecutor's

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10:49 1 Office, where I have been working since 1996 for the
 2 Prosecutor's Office of Kazakhstan, and I have been
 3 through all the steps of a prosecutor's career. And
 4 last year I was appointed as Deputy General Prosecutor
 5 of Kazakhstan Republic.
 6 Q. Mr Kravchenko, could you describe the general functions
 7 of the General Prosecutor's Office and your specific
 8 duties?
 9 A. The General Prosecutor's Office of Kazakhstan, on behalf
 10 of the state, carries out supervision on precise and
 11 uniform application of the constitution, of the laws, of
 12 the presidential regulations and other normative acts,
 13 on the compliance with law of the investigation
 14 activities, investigator's work, supports state prosecution and
 15 represents the interests of the state in court.
 16 My duties contain the supervision in the social and
 17 economic field, and since this is a very broad
 18 definition we have certain priorities in our work,
 19 namely first of all we fight corruption; we fight
 20 radical extremism and terrorism; we defend the rights of
 21 minors; we supervise labour legislation and its
 22 application; we protect the rights of entrepreneurs; and
 23 we protect social rights which are named in the
 24 constitution, social rights of the Kazakhstan citizens
 25 which are named in the constitution. These are the main

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10:51 1 priorities.
 2 Q. Thank you.
 3 Turning to this specific case, did the Prosecutor's
 4 Office receive complaints from KPM and TNG, or people
 5 connected with them, during the course of the criminal
 6 investigation?
 7 A. When we were preparing for the arbitration proceedings, we
 8 looked through
 9 and we tried to collect all the complaints which had to
 10 do -- which were received from all the legal persons and
 11 private persons, and we have obtained eight such
 12 complaints. And besides, as I have learnt when
 13 I already arrived to Paris, there was one more complaint
 14 from Terra Raf and Ascom applied to the prosecutor's office of
 15 Western Kazakh region.
 16 And to all the eight complaints that we found, we
 17 saw that all these eight complaints received respective
 18 answers to these complaints; and if you like, I could
 19 list them as well. Besides, as I already said, here in
 20 Paris the claimants produced -- in the case materials --
 21 produced an answer to a complaint of Ascom and
 22 Terra Raf.
 23 Thus I believe that the Prosecutor's Office reacted
 24 to all the cases when the Prosecutor's Office was
 25 approached by the claimant or other parties represented
 by the claimant.
 Q. Thank you.

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<p>10:53 1 A question regarding the rights of a defendant. Is</p> <p>2 there a limit on the amount of time that a defendant has</p> <p>3 to review the criminal file and to prepare for his</p> <p>4 defence before the trial?</p> <p>5 A. I'm afraid I did not understand the question. Could you</p> <p>6 please repeat?</p> <p>7 Q. Yes. The question relates to the rights of a defendant</p> <p>8 to prepare his trial. Is there a limit on the amount of</p> <p>9 time that he has to prepare the trial, and to review the</p> <p>10 criminal file to prepare the trial?</p> <p>11 A. If we are speaking about whether there are any deadlines</p> <p>12 or whether there are maximum limits for the defendant to</p> <p>13 get familiar with the materials of a criminal case,</p> <p>14 there are no limits, and the defendant may take his time</p> <p>15 and take as much time as he believes he needs to become</p> <p>16 familiar to defend himself in the trial. So he takes</p> <p>17 the time he needs for that.</p> <p>18 Q. Is it possible for a defendant to obtain further expert</p> <p>19 evidence in addition to any expert evidence obtained by</p> <p>20 the investigator?</p> <p>21 A. If a person became suspected or accused in a criminal</p> <p>22 process, according to our procedural legislation, such</p> <p>23 person remains entitled to make complaints or make</p> <p>24 applications throughout the entire criminal trial, which</p> <p>25 means prior to trial and during the trial as well, in</p> <p style="text-align: center;">Page 45</p>	<p>10:58 1 started against the people who committed such illicit</p> <p>2 activities. They extracted such materials or copied</p> <p>3 such materials from the official sources and forwarded</p> <p>4 them to unknown third parties.</p> <p>5 Q. Thank you. I would now like you to take a look at</p> <p>6 Exhibits C-704 and R-315. It's the transcript of the</p> <p>7 trial of Mr Cornegruta.</p> <p>8 A. Would you like me to open where you marked it?</p> <p>9 Q. I have a question. Could you describe how transcripts</p> <p>10 in general are created, and how this specific transcript</p> <p>11 was created?</p> <p>12 A. A transcript -- according to our code of criminal</p> <p>13 procedure, a transcript of a trial is made in different</p> <p>14 ways, or by different means. It can be handwritten, may be</p> <p>15 made by typing</p> <p>16 in a computer or typing machine. It can also be</p> <p>17 recorded, audio-recorded initially, or it can be</p> <p>18 video-recorded, so it will be a video source, although</p> <p>19 it is done by the secretary to the tribunal.</p> <p>20 And the secretary has, if this is done in writing,</p> <p>21 or -- if it's a handwritten transcript, the secretary</p> <p>22 must keep the handwritten text as very close to the</p> <p>23 words that the secretary hears in the trial when the</p> <p>24 participants speak. As a rule, there are no</p> <p>25 transcript-makers or shorthand-takers in Kazakhstan, and</p> <p>the secretaries at trials are not very professional. So</p> <p style="text-align: center;">Page 47</p>
<p>10:55 1 court. Such person may file applications requesting</p> <p>2 expert [reviews] of some kind, or any other measures,</p> <p>3 any other applications that he deems necessary.</p> <p>4 Q. Mr Kravchenko, turning to some events in this</p> <p>5 arbitration. (Pause)</p> <p>6 It has been now confirmed in this arbitration by</p> <p>7 Mr Stati, and also by counsel for claimants, that</p> <p>8 internal documents from Kazakh authorities have been</p> <p>9 passed to third parties. Is this a violation of Kazakh</p> <p>10 law?</p> <p>11 A. Yes, no doubt about that. This is a violation, at least</p> <p>12 a violation of the Law on Administrative Procedures.</p> <p>13 The law states that this information must be only used</p> <p>14 for service-related purposes, for official purposes.</p> <p>15 Q. And will you be taking any steps in this regard?</p> <p>16 A. I think I have to; I think the Prosecutor's Office must.</p> <p>17 I think that we will have to forward the respective</p> <p>18 information to the state authorities whose documents</p> <p>19 have been produced here in arbitration, and the</p> <p>20 documents which came from an unknown source, so that</p> <p>21 they can make official investigations.</p> <p>22 If, as a result of such official investigations, it</p> <p>23 is revealed that these materials were obtained through</p> <p>24 criminal activities, in this case most likely there will</p> <p>25 be criminal charges brought and criminal investigations</p> <p style="text-align: center;">Page 46</p>	<p>11:00 1 they write down, hand-write what they hear, something</p> <p>2 very close to what they hear.</p> <p>3 After the secretary has created such a draft</p> <p>4 transcript, he brings this transcript to the chairman of</p> <p>5 the tribunal, and the chairman will look through the</p> <p>6 transcript and can make some comments or corrections,</p> <p>7 because the judge himself is a participant of the</p> <p>8 criminal trial and leads the criminal trial, and knows</p> <p>9 exactly what questions he posed and what answers he</p> <p>10 received, and what procedural measures were taken in the</p> <p>11 process of trial.</p> <p>12 If the secretary disagrees with the comments he</p> <p>13 received, the secretary will make objections in writing;</p> <p>14 and if the secretary agrees, he will insert the</p> <p>15 corrections as suggested, and then the transcript or the</p> <p>16 minutes will be signed by both the chairman and the</p> <p>17 secretary. After that, the minutes will be attached or</p> <p>18 filed in the case materials for the criminal case.</p> <p>19 Reading the minutes is something that you do</p> <p>20 directly in court. The participants of a trial have the</p> <p>21 right to write out quotations from the minutes, but</p> <p>22 until 2011 the parties in criminal trials could not copy</p> <p>23 the entire minutes; they had no such possibility.</p> <p>24 In connection with preparation for this case, in</p> <p>25 order to clear this up for myself, I made a call:</p> <p style="text-align: center;">Page 48</p>

11:02 1 I called the judge who rendered the judgment in the
 2 criminal case of Mr Cornegruta. And this judge, she
 3 explained to me that the minutes were made
 4 electronically using a computer; that means that the
 5 secretary of the tribunal wrote it by hand ...
 6 THE INTERPRETER: Pardon me.
 7 A. He typed it in the computer. I believe he did type ...
 8 THE INTERPRETER: The interpreter asks if it was handwritten
 9 or typed in there.
 10 A. I believe he typed. And after the minutes were signed,
 11 they were filed in the criminal case, and as far as
 12 I know, the counsel or the lawyer read the minutes and
 13 did not make any comments in respect of the minutes.
 14 I reiterate that at that time, according to the
 15 legislation for criminal procedure of Kazakhstan,
 16 neither the parties nor any other participant of the
 17 criminal trial had the possibility to get a full copy of
 18 the minutes.
 19 Q. What is the procedure for the participants to become
 20 aware of the transcript?
 21 A. In order to -- speaking about specifically
 22 Mr Cornegruta's case, the procedure was like that: you
 23 would come directly to court and you can see the minutes
 24 directly in the case materials, directly while being in
 25 court.

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11:04 1 Q. Are transcripts ever sent out of the court to the
 2 participants?
 3 A. No, not at that time. It wasn't done so, and it
 4 couldn't possibly be done so because the law did not
 5 provide such an opportunity.
 6 Q. Can I ask you, Mr Kravchenko, to look at the page that
 7 I have flagged, and I have flagged that in every copy
 8 for the Tribunal and for counsel for claimant.
 9 I am asking the witness to compare the two versions:
 10 one version submitted by claimant (C-704) and the
 11 original submitted by respondent (R-315.2).
 12 MR FLEURIET: Can you just clarify what the witness is
 13 looking at? Because we were only handed a couple of
 14 pages and it appears he's got a large stack.
 15 DR NACIMIENTO: What we did is the following: we are asking
 16 the witness only to look at one page, and he has the
 17 full transcript, and we made copies for you. I could
 18 also offer to put it on the screen: it's basically what
 19 you have seen during the opening. And I have simply
 20 flagged the pages where he should look at and compare
 21 the versions.
 22 MR FLEURIET: Can you provide the page number or something?
 23 DR NACIMIENTO: It's in Exhibit R-315.2, page 39, and it's
 24 in the PDF, because it seems that the transcript itself
 25 does not have pages.

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11:06 1 MR FLEURIET: I don't think we've been given R-315.2, and
 2 I'm not sure that you've provided a translation of the
 3 transcript, other than just two or three pages. So it
 4 would be nice to see what's he's been --
 5 DR NACIMIENTO: That's right. We provided a partial
 6 translation due to time constraints. This transcript
 7 was received only last week, it was among the new
 8 documents submitted by claimant, and there was no time
 9 to make a full translation. This is why we submitted
 10 only a part of it translated into English, and this is
 11 what you should have before you.
 12 MR FLEURIET: That's right. You translated three or four
 13 pages out of about 100, right?
 14 DR NACIMIENTO: That is right, because we received this
 15 document only a few days earlier.
 16 THE CHAIRMAN: The claimant still wants to take a look at
 17 this?
 18 MR FLEURIET: I'd like to look at whatever he is going to be
 19 asked about. I don't think we've been provided with
 20 R-315.2.
 21 DR NACIMIENTO: What I will do is give you my copy, and here
 22 you have the full transcript and it's equally flagged.
 23 THE CHAIRMAN: I think it's fair enough. If it really
 24 becomes relevant, you can still pass things to us.
 25 DR NACIMIENTO: Exactly. I've flagged the page that I'm

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11:08 1 going to ask Mr Kravchenko to look at.
 2 Mr Kravchenko, in comparing those two pages, what is
 3 your observation?
 4 MR HAIGH: I'm sorry, counsel, I'm sorry to interrupt. When
 5 you say "those two pages", could you be more specific?
 6 I'm not sure I know exactly what he is comparing at the
 7 moment.
 8 DR NACIMIENTO: What the witness has been asked to compare
 9 is two versions of the transcript of the trial of
 10 Mr Cornegruta. We were provided with those documents on
 11 21st September. We then investigated with our client
 12 and got the original of the transcript, and this is what
 13 we then submitted. And because there was not sufficient
 14 time, and we are speaking about a document of about
 15 100 pages, we submitted only parts of the translation.
 16 I am asking the witness now to look at one page, and
 17 to compare those two pages. One is the exhibit
 18 submitted by claimants, it's their version; and the
 19 other one is the original transcript submitted by the
 20 state. It is supposed to be the same transcript, and it
 21 was submitted by claimants as a true transcript.
 22 MR HAIGH: Thank you for that. I just wanted to have some
 23 precision on the record as to the pages that he is
 24 looking at.
 25 DR NACIMIENTO: You have our opening, and this is also where

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11:10 1 we put those pages (slides 31-35), and it is exactly the

2 same page that we are asking Mr Kravchenko to look at

3 now.

4 MR HAIGH: Thank you, that's helpful.

5 THE CHAIRMAN: And the comparison is on the flagged part of

6 the document?

7 DR NACIMIENTO: That is right. We are looking at one page.

8 It is supposed to be the same page of a transcript which

9 was submitted by claimants as the original transcript.

10 We submitted the original court transcript as received

11 from the state. And I am asking Mr Kravchenko to

12 compare it and to tell us if there are any differences.

13 MR FLEURIET: Mr Chairman, just one quick point. Counsel

14 a couple of times has said that we submitted this as the

15 "original transcript". We submitted this as a copy of

16 the transcript that was provided -- as Mr Condorachi

17 testified to us the other day -- by the court itself.

18 We did not submit this as a signed official transcript;

19 we submitted the only thing that the court was able to

20 give our client.

21 THE CHAIRMAN: That came out in testimony yesterday, and we

22 are aware of that.

23 DR NACIMIENTO: I think what was said yesterday is that it's

24 a draft that you submitted. But it was not submitted

25 within your documents, and it was not indicated by you

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11:13 1 A. I believe this is a clear violation of procedural rules.

2 I cannot say who exactly violated them. However, it is

3 important to investigate this matter, and probably by

4 initiating a criminal case as well. It is quite clear

5 to me.

6 Q. Thank you.

7 Mr Chairman, I am now going to ask the witness to

8 compare the contents. What we could do to make it

9 quicker, we have flagged that in our opening and we

10 could just put it up on the screen now, if that is

11 agreeable with you.

12 THE CHAIRMAN: Go ahead. (Pause)

13 DR NACIMIENTO: Mr Kravchenko, I am going to ask you to

14 compare the versions. You could also look at the

15 versions in front of you.

16 THE CHAIRMAN: I am terribly sorry, it is rather small.

17 Perhaps we could get our printed copies of that and you

18 tell us the page.

19 DR NACIMIENTO: Yes. For you it would be slide 35 and

20 slide 33.

21 THE CHAIRMAN: This is the first?

22 DR NACIMIENTO: Yes, on jurisdiction: slides 33 and 35. And

23 those slides refer to the translation of the document,

24 and other slides contain the Russian version.

25 Mr Kravchenko, could you please compare those two

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11:11 1 that it's a draft only. It was submitted as the

2 transcript of the trial.

3 THE CHAIRMAN: I may be wrong, but my recollection was --

4 and please correct me -- that it was not submitted as

5 a draft, but as a document officially received from the

6 court on request.

7 MR FLEURIET: That's correct. But I am happy to stipulate

8 that it is not a signed version.

9 THE CHAIRMAN: Yes, of course.

10 MR FLEURIET: It is what was provided to our client.

11 DR NACIMIENTO: We will come back to that at a later stage.

12 THE CHAIRMAN: Okay, thank you.

13 DR NACIMIENTO: Mr Kravchenko, looking at those two pages,

14 what is your first observation?

15 A. First of all, the document to my right is signed both by

16 the secretary and the judge, and this document also has

17 a mark that someone was made familiar or someone has

18 read this document and did not have any comments. The

19 second document does not have any signatures, neither of

20 the secretary nor of the judge.

21 Q. You explained the procedure for creating such

22 a transcript, and for informing the parties that the

23 transcript has been created. What is your position in

24 regard to what you just heard regarding the existence of

25 a non-signed copy in the hands of a participant?

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11:16 1 versions and tell the Tribunal if there are any

2 differences?

3 A. At least I can see several paragraphs which are very

4 different, totally different from each other. Do you

5 want me to read them?

6 Q. Yes, please.

7 A. In the transcript which is not signed, what it says

8 is --

9 THE INTERPRETER: Just a second. The interpreter needs

10 a reference too.

11 A. Mr Cornegruta, answering the questions of the judge,

12 answered:

13 "Question: Have you received illegal profits?

14 "Answer: I did not receive illegal profits;

15 21 billion is not my profit.

16 "Question: But this is a profit of the legal

17 entity, do you agree?

18 "Answer: Yes.

19 "Question: Did you use the trunk pipeline without

20 permit?

21 "Answer: I did not deal with oil production; I did

22 not obtain licence.

23 "Question: Does the above mean that you do not

24 believe that the pipeline UKPN-TSB Opornaya registered

25 with the balance sheet of Kazpolmunay is a trunk

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11:18 1 pipeline?

2 "Answer: ... "

3 Q. Mr Kravchenko, maybe to speed this up, could I ask you

4 to read --

5 THE CHAIRMAN: I'm sorry, we need the answer.

6 DR NACIMIENTO: I'm sorry, go ahead.

7 THE CHAIRMAN: Give us the answer.

8 THE INTERPRETER: We continue translating the text.

9 A. "Answer: I do not believe that this pipeline is a trunk

10 pipe line according to the Law on Oil. Besides, the

11 notion of trunk pipelines can be seen in the explanatory

12 dictionaries, specialised dictionaries and other

13 reference literature on oil and gas.

14 "Question: Have the licences available to

15 'Kazpolmunay' been reissued and changed to the new

16 template of the licence according to the introduction of

17 the new law on licensing and changes of the licensee?

18 "Answer: To this question I cannot give an answer,

19 Since" --

20 THE CHAIRMAN: I don't want to insist on the rest, but

21 I thought the answer was relevant.

22 DR NACIMIENTO: No, I just tried to speed it up. But

23 I think it is fine, we have it in the record.

24 Just for clarification, which document were you

25 reading from right now: from the signed copy or from the

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11:19 1 unsigned copy?

2 A. I was reading from the non-signed copy. I just read

3 from the non-signed copy.

4 THE INTERPRETER: And the interpreter has one more line out

5 of this document to translate for the record, out of the

6 things the witness said.

7 A. Do you want me now to read the paragraph in the signed

8 version?

9 Q. Yes, please.

10 A. In the signed version we have totally different totally

11 different text. The first question:

12 "Question: Did you use a trunk pipeline?

13 "Answer: Kazpolmunay worked with oil production,

14 [did not work, I believe this is wrong, record],

15 Kazpolmunay has a licence. But Kazpolmunay does not

16 have a trunk pipeline, for this reason I did not obtain

17 licence for this kind of activity.

18 "Question: Does the above mean that you do not deem

19 the pipeline UKPN-TSB Opornaya registered at the balance

20 sheet of Kazpolmunay to be a trunk pipeline?

21 "Answer: I do not believe this pipeline is a trunk

22 pipeline, according to the Law on Oil; besides, the

23 definition of the trunk pipelines is to be found in the

24 explanatory dictionaries, specialised dictionaries and

25 reference literature on oil and gas. It has legal,

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11:21 1 technical and economical aspects.

2 "Question: Why did Kazpolmunay ask the Ministry of

3 Energy to reissue the existing licences, specifying the

4 type of activities being use of linear portion of the

5 trunk pipeline?

6 "Answer: This letter was sent to the competent

7 authority due to the fact that the names of the

8 activities were changed, however, specifying the linear

9 part of the trunk pipeline is a mistake of the executive

10 official, of the lawyers. I reiterate that Kazpolmunay

11 does not have a trunk pipeline.

12 "Question: Do you agree that this pipeline is used

13 to transport commercial oil to TSB?

14 "Answer: No, I disagree. Since at TSB the oil is

15 being prepared in addition, this oil cannot be called

16 a commercial oil yet."

17 "Question: Could you please tell us about your work

18 experience?

19 "Answer: I graduated in 1979" --

20 THE CHAIRMAN: Is it necessary to read that?

21 DR NACIMIENTO: No.

22 THE CHAIRMAN: Okay. Let's stop there.

23 A. So the pieces we compared demonstrate that the signed

24 record and the non-signed record differ. The non-signed

25 record deleted certain paragraphs with answers of

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11:23 1 Mr Cornegruta concerning the investigations that the

2 court made on the trunk pipeline, and for reasons

3 unknown to me or unclear to me, the paragraph was

4 deleted concerning Kazpolmunay's approaching the

5 ministry in order to reissue the licences and stating

6 the types of activities related to the trunk pipeline.

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

8 THE CHAIRMAN: Thank you very much.

9 Questions from the claimant, or should we have

10 a break? It would be a good time to have a break if you

11 have more than a few questions.

12 MR FLEURIET: I have more than a few questions.

13 THE CHAIRMAN: Okay, that settles the matter. So we'll meet

14 at 11.45, please.

15 (11.24 am)

16 (A short break)

17 (11.45 am)

18 THE CHAIRMAN: Alright, we come to cross-examination.

19 Please.

20 Cross-examination by MR FLEURIET

21 Q. Mr Kravchenko, good morning. My name is Ken Fleuriet,

22 and I will be asking you some questions today on behalf

23 of the claimants in this case.

24 A. Good morning.

25 Q. As I understood your testimony on direct examination

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11:46 1 a few moments ago, you said that after the secretary --

2 or whoever it is in the courtroom -- prepares the

3 transcript, that the judge then later amends the

4 transcript. Is that correct?

5 A. Yes, it is correct.

6 Q. Do you know in this instance what period of time

7 transpired between the preparation of the transcript and

8 the judge's alterations of the transcript?

9 A. No, I don't know.

10 Q. You also testified, I believe, a moment ago that a party

11 cannot obtain a copy of a transcript. Is that correct?

12 A. Yes, it is correct.

13 Q. So I presume a non-party to a case could also not obtain

14 a copy of a transcript, right?

15 A. Yes, it is correct.

16 Q. What was your position before you were appointed Deputy

17 Prosecutor General of Kazakhstan last year?

18 A. I held the position of head of department for observance

19 of legality of activities in the social and economic

20 spheres.

21 Q. So that was a significant promotion you received last

22 year, was it not?

23 A. Yes, it is correct.

24 Q. Just to clarify, you have submitted two witness

25 statements in this case; correct?

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11:48 1 A. Yes.

2 Q. To make this easier, I am primarily today going to be

3 referring to your second witness statement. If you

4 could keep that handy, I would appreciate it.

5 A. What I have received now, is this the second witness

6 statement?

7 Q. Those are some documents I will be asking you about.

8 I believe your witness statement should be on the left.

9 Now, in paragraph 13.1 of your second witness

10 statement you state that:

11 "All actions of law enforcement authorities were

12 strictly within the frame[work] of the [Republic of

13 Kazakhstan's] legislation."

14 Does that remain your testimony today?

15 A. Yes, until I learn about any other actions outside the

16 legal framework.

17 Q. What actions would those be?

18 A. I have no idea.

19 Q. Do you recall any such actions outside the legal

20 framework?

21 A. You mean in my own practice?

22 Q. Well, in relation to this case. I think I asked you

23 whether all actions of law enforcement authorities were

24 strictly within the framework, and you said:

25 "Answer: ... until I learn about any other

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11:51 1 actions... "

2 And I just wanted you to clarify that answer.

3 A. No. In connection with this case, I don't know about

4 any actions outside the framework of the law.

5 Q. Okay. Let me ask you to turn to paragraph 13.8 and read

6 the first sentence to yourself. In the English

7 translation it says:

8 "On 15 December 2008 the criminal proceedings were

9 initiated in relation to KPM unlicensed activity, not in

10 respect of any individual defendant."

11 Correct?

12 A. Yes, it is correct.

13 Q. And then in the second sentence of the very next

14 paragraph you say:

15 "That is to say, the proceedings were only

16 transferred to the court after a thorough investigation

17 and collection of evidence supporting the guilt of

18 Mr Cornegruta."

19 Right?

20 A. Yes, it is correct.

21 Q. In that second sentence in paragraph 13.9 you don't make

22 any reference to KPM, do you?

23 A. Excuse me, are you talking about 13.8 or 13.9? We've

24 been reading from 13.8 so far, and now you refer to

25 13.9. I'm sorry, then I have to read it again, 13.9.

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11:53 1 Q. Please do. I'm referring to the first sentence of 13.8

2 and the second sentence of 13.9.

3 A. Yes.

4 Q. If I understand these two sentences, you are saying that

5 criminal proceedings were initiated in relation to the

6 company, KPM, not an individual. But by the time it's

7 transferred to the court, this has become a case against

8 an individual, not a company. Is that correct?

9 A. No, this is not correct. Please note once again the

10 first sentence in paragraph 13.8: it says that the

11 criminal proceedings were initiated not in relation to

12 KPM, but with reference to a fact of unlicensed

13 activities of KPM. This is a substantial difference. That is, there

14 was a fact of

15 non-licensed activities which triggered a criminal

16 investigation, not with respect to a company.

17 Q. Right. But in December 2008 the criminal proceedings

18 that were initiated were in relation to the activity of

19 KPM; correct?

20 A. Not in relation to the activities of KPM, but with

21 respect to or in relation to the fact of non-licensed

22 activities of KPM.

23 Q. Okay. So in respect to the relation of non-licensed

24 activities of KPM, that's what's being initiated in

25 December 2008. And my point is: by the time this is

transferred to the court, it has become a case against

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11:56 1 Mr Cornegruta, the individual, and not KPM, right?

2 A. The case was not transformed, but I think that you will
 3 get an answer from the subsequent witnesses on how the
 4 court developed a case against Cornegruta. I don't know
 5 all the circumstances, but my understanding is that
 6 after the subject of a crime was discovered, identified,
 7 the criminal charges were brought against this subject,
 8 and this criminal case was handed over to the court.
 9 Q. And who was that subject?
 10 A. It was Mr Cornegruta.
 11 Q. It was not KPM; correct?
 12 A. Yes, it is correct.
 13 Q. Let me on this subject refer you, please, to tab 11 in
 14 your binder. This is the indictment, which is at C-454
 15 in the record. I'm not sure if the Russian pages are
 16 numbered. In the English pages it's on page 24, which
 17 is about two or three pages from the end. It's the last
 18 section of the indictment, page 31 of the Russian,
 19 I believe.
 20 That just shows that Serghey Cornegruta was the
 21 party who was indicted in this case, right?
 22 A. Yes, it is correct.
 23 Q. KPM is not named in this indictment, is it?
 24 A. Yes, it is correct -- it may be. I think it is
 25 mentioned. As far as I can see it is mentioned, and on

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11:59 1 many occasions. At least I am reading this text, and

2 even on the same page it is mentioned at least three
 3 times -- four times.
 4 Q. Right, it's mentioned in the description here. But in
 5 terms of the party who is being indicted, the party who
 6 is being indicted is Mr Cornegruta, right? Is that set
 7 off in your Russian version as well?
 8 A. I don't have any highlighting here, but you are right.
 9 Q. Now, it's correct, is it not, that under Kazakhstan's
 10 criminal law, only a sane natural person who has reached
 11 the age of maturity is subject to criminal liability;
 12 correct?
 13 A. Yes, it is so.
 14 Q. It was actually not possible for KPM to be --
 15 A. But not only these for certain crimes.
 16 Q. Does Article 14 of the Criminal Code of Kazakhstan not
 17 say that only a sane natural person who has reached the
 18 age of maturity is subject to criminal liability?
 19 A. Yes, you are right.
 20 Q. So it was actually not possible for KPM to be charged
 21 with the crime that Mr Cornegruta was charged with,
 22 right?
 23 A. Not in the criminal process; that's correct.
 24 Q. And are you aware that Kazakhstan in fact brought
 25 administrative cases against KPM that were later

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12:01 1 dropped?

2 A. Yes, I know.
 3 Q. There was one by the Western Regional Transport
 4 Prosecutor's Office; correct?
 5 A. I don't remember exactly now.
 6 Q. Let me just ask you to turn to tab 38. This is where
 7 it's discussed by one of claimants' witnesses,
 8 Mr Condorachi, and it's going to be at paragraph 30.
 9 A. I'm sorry, I have only the English text. I'm sorry,
 10 I am not as fluent in English as I am in Russian.
 11 Q. I believe that's because the original was submitted in
 12 Romanian. Let me just read you the two sentences that
 13 I am referring to. So Mr Condorachi says:
 14 "Actually, in late June 2009, the Western Regional
 15 Transport Prosecutor's Office initiated administrative
 16 cases against KPM pursuant to Article 357-1, Paragraph 1
 17 of the Kazakh Administrative Offence Code for
 18 operating" --
 19 THE CHAIRMAN: Read it slowly, because they have to
 20 translate.
 21 MR FLEURIET: Excuse me.
 22 "... Paragraph 1 of the Kazakh Administrative
 23 Offence Code for operating 'main' pipelines without
 24 a license. In July 2009, the Financial Police initiated
 25 its own administrative cases against KPM and TNG on the

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12:03 1 same legal grounds."

2 Later in the paragraph he says:
 3 "The administrative cases were illegal because
 4 an administrative investigation cannot be initiated or
 5 maintained if there is a criminal action."
 6 Does that refresh your recollection regarding the
 7 two administrative cases that were commenced against
 8 KPM?
 9 A. Unfortunately I have no knowledge of this. I know that
 10 there were administrative cases, but who brought them
 11 exactly. And I know that the outcome of these cases was
 12 that nothing was imposed, no penalty was imposed on the
 13 company, and no decisions were made in these
 14 administrative cases. This is all I know.
 15 Q. Well, would you agree with me that in order to make KPM
 16 a party to a legal action, the proper way to have
 17 pursued this would have been the administrative route,
 18 so that KPM actually could be named as a party?
 19 A. No, I don't agree. There are other routes. There is
 20 civil law responsibility.
 21 Q. Correct. Are you referring to a civil case within
 22 a criminal proceeding? That's also a possibility;
 23 correct?
 24 A. Yes, civil law responsibility of a legal person may be
 25 taken up and reviewed within the framework of a criminal

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12:05 1 case.

2 Q. Right. I will preface this by saying I am not a civil
 3 law lawyer, but I have lived in France long enough to
 4 understand a little bit of it.
 5 If you would like to make a company a party in
 6 a jurisdiction in which it's not possible to bring
 7 a criminal action against a company, you would file
 8 a civil claim within the context of a criminal
 9 proceeding and name that company as a defendant to the
 10 civil claim, or separately you would pursue
 11 an administrative action against a company; would you
 12 agree with that?
 13 A. Well, roughly it is probably so. But you don't even
 14 need to file a separate claim within the framework of
 15 a criminal case in Kazakhstan.
 16 Q. In order to name a company as a party, you do have to
 17 file a civil claim, because a company, as you testified
 18 a moment ago, cannot be a party to a criminal
 19 proceeding, right?
 20 A. I want to say that the practice of the Kazakhstan courts
 21 is that not necessarily a company is presented a claim
 22 within the framework of a criminal case, because civil
 23 law responsibility of a company may follow or be
 24 presupposed out of the criminal case itself.
 25 Q. There is no provision of Kazakh law that formally

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12:10 1 .

2 I can say only that the case of Kazpolmunay was not
 3 unusual for a Kazakhstan court; it was normal practice.
 4 And I know about this practice. There was nothing
 5 exceptional in this case.
 6 Q. Is it your testimony that it's not exceptional for
 7 a criminal sentence to be levied against a non-party to
 8 a case in Kazakhstan?
 9 A. You are wrong in this situation, because the
 10 representatives of Kazpolmunay, as far as I know -- and
 11 I looked through the judgment -- participated in the
 12 court sessions in this court case, and they had
 13 an opportunity to file motions to the court and defend
 14 their rights.
 15 Q. Thank you, but that was not an answer to the question
 16 I posed.
 17 My question was: would you agree that it is
 18 exceptional for a criminal sentence to be levied against
 19 a non-party to a case in Kazakhstan?
 20 A. You are formulating your question in such a way which
 21 does not take into account the obvious elements of the
 22 situation I am talking about. So with your permission
 23 I would like to ask you to reformulate your question;
 24 otherwise I will not be able to reply in the way you
 25 expect, because I know that KPM was actually

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12:07 1 provides for what you just said, is there?

2 A. No. Why? There is an explanation of the Supreme Court;
 3 unfortunately I can't give an exact reference now. But
 4 it is mandatory that the civil law responsibility, if it
 5 follows from a criminal case, should be taken up and
 6 reviewed by a court.
 7 Q. Right. There's no provision of Kazakhstan's civil law
 8 or Kazakhstan's Criminal Code or Kazakhstan's Code of
 9 Criminal Procedure that enables what you just said;
 10 right?
 11 A. I think you are wrong, because I know the judicial
 12 practice. At least when I was preparing for these
 13 proceedings, I've seen certain court rulings, they came
 14 into force, they've never been appealed against, so they
 15 are in force, they remain in force.
 16 Q. Those were tax cases, right?
 17 A. No, I've seen court rulings, and I have one of them with
 18 me actually, under Article 190. I think it concerned
 19 an enterprise by Mr Makhmadov in Zhambyl region.
 20 Q. Case law is not authoritative in Kazakhstan under the
 21 civil law system that Kazakhstan has, is it?
 22 A. Yes, it is correct. But the judicial practice is
 23 accumulated, and then it is summed up in the decisions
 24 made by the Supreme Court. And in some way the lower
 25 courts react to these explanations by delivering corresponding
 rulings and judgments.

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12:12 1 a participant of this case, of this process.

2 I am saying that in any --
 3 Q. Let me stop you. Your counsel can come back to you in
 4 re-direct. Can you please just answer the question
 5 I posed.
 6 Would you agree with me that in Kazakhstan it is
 7 exceptional for a criminal sentence to be rendered
 8 against an entity that is not a party to a proceeding?
 9 A. Alright. If we don't mean this specific case, it is so;
 10 it is an exceptional situation if a party was not
 11 a participant in the process.
 12 Q. And of course by being a party and a participant in the
 13 process, important rights follow from that, right?
 14 Including, for example, the right to have counsel?
 15 A. Yes, of course.
 16 Q. So in your view, who earned the illegal profit allegedly
 17 at issue in this case: Mr Cornegruta or KPM?
 18 A. In my opinion, you asked?
 19 Q. Yes. In your view, in your understanding in this case,
 20 who earned the illegal profit that comprised part of the
 21 crime of illegal entrepreneurial activity in
 22 an especially large amount: Mr Cornegruta or KPM?
 23 A. I think both; both persons. Initially it was KPM that
 24 was receiving illegal profits, and subsequently it was
 25 Mr Cornegruta, through his salary or some other material

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12:15 1 benefits. It might be some social package, for example.

2 Q. Is it your testimony that they both received the
 3 US\$145 million? Or I can give you the amount in tenge,
 4 but let's just call it 21 billion tenge for now. Is it
 5 your testimony that they both received that amount?
 6 A. My testimony is that possibly both persons received.
 7 But a more exact reply to this question is contained in
 8 the ruling of the court which came into legal force.
 9 Q. Let's turn to the ruling of the court. That's in your
 10 binder at tab 6. This is Exhibit C-117.
 11 Actually, let's start at the first page of the
 12 court's decision. Do you see there, before you get to
 13 the first heading, "Established the Following", in the
 14 description of the case it says:
 15 "... the criminal case pursuant to the criminal
 16 charges of ... "
 17 And then it lists Mr Cornegruta, and it says he is:
 18 "... brought to trial under Article 190, part 2,
 19 section 'b' of the Criminal Code of the Republic of
 20 Kazakhstan ..."
 21 Do you see that?
 22 A. Yes, of course.
 23 Q. There is no mention of KPM being a defendant or a party
 24 in that description, is there?
 25 A. Of course. This is correct.

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12:21 1 My question is: do you agree with what Kazakhstan

2 says in that sentence, that the recovery is directly
 3 linked to the profit made?
 4 A. I beg your pardon, it might be an incorrect translation,
 5 but I don't think we are speaking about profit; we are
 6 speaking about revenue. We are speaking about the
 7 revenue or the income due to illegal entrepreneurial
 8 activity.
 9 Q. So is it your testimony that you disagree with this
 10 sentence in Kazakhstan's legal brief saying that the
 11 recovery "is directly linked to the profit made", and
 12 that that in fact should read "revenue"?
 13 A. That's correct, we should speak about revenue. Revenue
 14 or income, but not profit.
 15 Q. Let me read -- actually, unfortunately it's not in your
 16 binder, but I am going to read you a sentence from
 17 paragraph 619 of Kazakhstan's rejoinder, the legal brief
 18 I just read from. It says:
 19 "In principle, it is correct that income stemming
 20 from legal activity has to be disregarded in calculating
 21 the sum to be recovered."
 22 Would you agree that "income stemming from legal
 23 activity has to be disregarded in calculating the sum to
 24 be recovered"? Would you agree with that statement?
 25 A. Income stemming out of legal activity should be

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12:18 1 Q. Let me go back now to the issue of the 21 billion tenge

2 sentence that was imposed. You mention this in your
 3 witness statement, I believe. You talk about the
 4 penalty that was imposed in paragraph 10.3 of your
 5 second witness statement, right? (Pause)
 6 A. I have read it. Everything is correct there.
 7 Q. And in the next paragraph, in paragraph 10.4, you refer
 8 to the examinations that were carried out by the experts
 9 with special knowledge in the field, and you say:
 10 "... there are no grounds not to trust the specified
 11 expert opinions."
 12 Right?
 13 A. That's correct.
 14 Q. Let me ask you to turn now to tab 39 in your binder.
 15 This is part of the legal brief that was filed by
 16 Kazakhstan in this case, part of Kazakhstan's rejoinder
 17 (page 203). It's only in English, I don't have
 18 a Russian version of it, but I will read you the
 19 sentence in question; I want to see if you agree with
 20 it. Kazakhstan says here (paragraph 614):
 21 "The mechanism for the recovery of illegal income is
 22 quite simple. The amount to be recovered is directly
 23 linked to the profit made as a result of the criminal
 24 activity, so as to ensure that no unjust enrichment
 25 remains with the company."

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12:24 1 disregarded? That's what you are trying to say, right?

2 Q. That's right. That is what Kazakhstan has said in its
 3 rejoinder. I am asking if you agree with that.
 4 A. Yes, I agree with that, because we are speaking about
 5 two opposite types.
 6 Q. Two opposite types of what?
 7 A. Well, you are speaking about legal income and I was
 8 speaking about illegal income. Or we are speaking about
 9 two types of income: legal and illegal.
 10 Q. Right. But it is the case, is it not, that in
 11 Kazakhstan you would normally subtract any income
 12 stemming from legal activity when you are calculating
 13 the sum to be recovered in a case such as this?
 14 A. I believe you are mistaken because most likely you are
 15 speaking about seizure, while in this particular case we
 16 had a recovery, recovery of illegally earned income, and
 17 this is not the same as a seizure under Kazakhstan law.
 18 If we talked about seizure in this criminal case,
 19 I would agree to your conclusion. But in this
 20 particular case we had income stemming out of illegal
 21 activity, entrepreneurial activity.
 22 Q. In fact I was referring to earned income. Is it not the
 23 case that you would subtract any amounts that were
 24 legally earned?
 25 A. Alright, let me explain it one more time.

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12:26 1 Under the criminal law of Kazakhstan there is

2 a separate sanction called confiscation or seizure:

3 confiscation of the assets, of monies, of shares, any

4 other things. And if the court would award as

5 additional sanction confiscation, in this case the court

6 would deduct out of the amount to be confiscated

7 everything that was earned legally.

8 In our case the court recovered the income that was

9 stemming out of illegal activities, and in fact the

10 court recovered it by means of civil enforcement in

11 a criminal case.

12 These are two absolutely different things, and any

13 judge of Kazakhstan will agree with me.

14 Q. Let me ask you to turn to tab 12 in your binder, which

15 is Exhibit 2 to the report of Professor Malinovskiy in

16 this case.

17 A. I am with you.

18 Q. This is a regulatory resolution of the Supreme Court of

19 Kazakhstan dated June 2004, right?

20 A. That's right.

21 Q. Let me ask you to refer to Article 9, which in the

22 English is on the second page toward the top. In the

23 second sentence of that article it says:

24 "Revenue received from the part of operations that

25 are legal must be excluded from the calculation of

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12:28 1 illegal profits."

2 Do you see that?

3 A. Yes, I do see this.

4 Q. That indicates, does it not, sir, that revenue from

5 a part of operations that are legal must be excluded

6 from a calculation of illegal profits?

7 A. I believe they speak about the definition of a crime,

8 the definition of a crime under Article 190 concerning

9 the particular individual; while we are speaking -- and

10 I have to reiterate and get back to my earlier answer

11 that we are speaking about a civil enforcement in the

12 framework of a criminal process.

13 Q. Sir, in fact the Supreme Court here is directly

14 addressing Article 190 of the Criminal Code, which is

15 the precise provision under which Mr Cornegruta was

16 convicted; isn't that correct? Do you see the

17 references to Article 190 in the first and third

18 sentences of Article 9?

19 A. Yes, I do. But I reiterate that you are speaking about

20 qualifying a certain crime of a certain specific

21 individual, and this is what the Supreme Court is

22 describing here; while I am speaking about civil

23 enforcement in the framework of

24 a criminal trial. The Supreme Court does not say a word

25 about that.

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12:30 1 We have a general provision saying the income

2 obtained by means of illegal entrepreneurial activity

3 should be in full recovered into the state budget. And

4 this is also law, and this law is higher than any

5 resolutions by the Supreme Court in the hierarchy.

6 Q. Just to clarify, what I am speaking about is, I believe,

7 what you said at the beginning of your answer, which is

8 how you determine whether or not an individual has

9 committed a certain crime. And that's what this refers

10 to, right: how you would make that calculation?

11 A. Yes. Applying to Mr Cornegruta, I believe this is the

12 case.

13 Q. Let me just read the first sentence of Article 9:

14 "Receipt of revenue in the meaning of Article 190 CC

15 [Criminal Code] shall be construed as receipt of profits

16 from illegal entrepreneurial activities excluding

17 expenses connected with performance of such activities

18 as well as with payment of taxes and performance of

19 other obligations."

20 Do you see that?

21 A. Yes, of course.

22 Q. So in determining the amount of illegal profits, you

23 would deduct expenses, payment of taxes, and performance

24 of other obligations, right?

25 A. That's not correct. I'm afraid I failed to explain.

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12:32 1 I don't really know how to explain this difference,

2 which to me seems to be apparent. I am speaking about

3 one kind of thing and you are speaking about a totally

4 different kind of thing. I'm afraid I can't explain it

5 better. How can I possibly explain this?

6 You speak about the duty, what we should have done

7 in respect of Mr Cornegruta, qualifying his actions

8 falling under Article 190; while I am telling you that

9 the income of the company stemming out of illegal

10 activities was recovered from the company by civil

11 means, in the framework of a criminal trial. And this

12 is why you cannot find anything about it in the

13 resolution of the Supreme Court, because these are two

14 different things.

15 I'm very sorry if I failed to explain it better, but

16 I can't see a better way.

17 Q. You in fact did not pursue a civil claim in the context

18 of the criminal trial with regard to KPM, did you, sir?

19 A. Earlier I said that within the framework of a criminal

20 trial, it is common in courts that civil rights and

21 civil law obligations are enforced by the means that you

22 have seen used in the case of Mr Cornegruta. At least

23 this is what I know of, and I know of this kind of

24 practice in courts. And I know that the courts have

25 similar judgments, and there are no particular claims

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12:35 1 posed to particular companies.

2 Q. I thought earlier you said that it would have been
 3 possible to have brought a civil claim or
 4 an administrative action against KPM. Did
 5 I misunderstand that?
 6 A. No, it was you who said so; I did not say it.
 7 Q. Well, the transcript will reflect what it reflects on
 8 that point.
 9 Let's go back to Mr Cornegruta, though. You would
 10 agree that Article 9 -- as I understand your
 11 testimony -- of this regulatory resolution is relevant
 12 to determining whether Mr Cornegruta committed the crime
 13 of receipt of profits from illegal entrepreneurial
 14 activities, right?
 15 A. That's correct.
 16 Q. Is it your testimony that the court in Aktau properly
 17 deducted expenses connected with activities such as
 18 payment of taxes and performance of other obligations in
 19 determining whether or not Mr Cornegruta had violated
 20 Article 190 of the Criminal Code?
 21 A. Unfortunately I did not review this matter. But if you
 22 like, we can look at it together.
 23 Q. I would like to, and I'll take you up on your offer.
 24 You said there were no grounds not to trust the
 25 specified expert opinions, in your witness statement.

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12:37 1 You were specifically referring to the opinion that
 2 calculated the illegal revenues at 21.675 billion tenge.
 3 Do you recall that?
 4 A. Yes, of course I did say that I am not aware of anything
 5 else, and this is what I confirm.
 6 Q. Let me ask you to turn to tab 13, which is
 7 Exhibit C-452. There were actually three of these
 8 reports, as mentioned in paragraph 10.3 of your
 9 statement, right? There was one dated
 10 November 28th 2008; there was another dated
 11 April 7th 2009; and then the third one was dated
 12 May 18th 2009. I am referring to the dates in
 13 paragraph 10.3 of your statement.
 14 A. I only have one expert opinion, dated
 15 28th November 2008.
 16 Q. Correct. Behind this tab there's only the first one,
 17 dated November 28th.
 18 A. Alright.
 19 Q. Here we have two different calculations that are being
 20 made. There are two different tables in this report;
 21 correct?
 22 A. Right.
 23 Q. Let me refer you to the last several lines of text
 24 before the first table. It says:
 25 "The review of the documents presented for expert

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12:39 1 examination found that the income derived from the
 2 unauthorized activity of oil transportation and
 3 subsequent sales through product pipeline belonging to
 4 [KPM] amounted to [41.166 billion tenge] ... "
 5 "And then in English it says "including", and there
 6 is a colon:
 7 "Income from sales of the end product."
 8 Do you see that?
 9 A. Yes. I say if you want me to see the difference in the
 10 translation and the original, you should explain it.
 11 Q. Would you agree with me, sir, that a main pipeline
 12 operator earns revenues, and ultimately profits, from
 13 transporting oil for third parties and being paid for
 14 that service?
 15 A. Yes, I would agree.
 16 THE INTERPRETER: Excuse me, sir. Did you heard the
 17 previous answer of the witness? Being: "If you want me
 18 to see any differences in the translation and the
 19 original, please specify." It is in the script, but
 20 I don't believe it was on the right channel.
 21 Q. Yes, feel free to clarify any differences in the
 22 translation; that would be fine.
 23 Is there a difference in the translation you would
 24 like to point out?
 25 A. May I use the help of a lawyer on the side of

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12:42 1 respondent?
 2 Q. No.
 3 A. Then it means -- I have a feeling that there is some
 4 difference between the two texts. Unfortunately my
 5 English is not good enough to explain this difference.
 6 Q. I think I know what you may be referring to. Is there
 7 an issue with the words "transportation and subsequent
 8 sales"? Is that -- it really only refers to "sales"?
 9 A. Yes.
 10 Q. I'm not going to ask you anything relevant to that
 11 question. In fact the point I wanted you to confirm is
 12 that what is listed in this first table is just the
 13 sales of the end product of KPM, right? And this is
 14 just a tally of invoices from the sales.
 15 A. Apparently so.
 16 Q. Okay. Let me ask you now to turn to the second table.
 17 A. Of the same document?
 18 Q. Of the same document, yes, sir. Now, this table -- I am
 19 referring to the text, the sentence immediately before
 20 this table -- this table represents the revenues of KPM
 21 for "providing services of crude oil transportation to
 22 Tolkynneftegaz ... through the oil pipeline belonging to
 23 [KPM]", right?
 24 A. It appears to be so, yes.
 25 Q. Why was this distinction made, if you know, between the

Page 84

12:44 1 sales of KPMs product and the income that was earned

2 from oil transportation through the pipeline?

3 A. It's hard for me to answer this question because I was

4 not the one who carried out this expert review; I did

5 not study it, I did not talk to the experts. So I just

6 don't know.

7 Q. That's fair enough.

8 Would you agree with me that it's at least clear

9 from this report that the distinction between sales of

10 oil by KPM and fees earned by KPM for transport was

11 evident to those preparing this report?

12 A. Possibly so.

13 Q. Now, if you wanted to calculate the amount of income

14 earned by KPM for operating what was classified as

15 a main pipeline, you would only look at the second

16 table; correct?

17 A. Quite possibly so. It's hard for me to compare the two

18 tables immediately and tell you why the experts did what

19 they did and what questions were posed to these experts.

20 Q. That's fair enough. I am not going to ask you what

21 questions were posed to the experts.

22 I am just asking you: in your opinion -- because you

23 have referred to this expert report and you say there is

24 no grounds not to trust it -- would you agree with me

25 that for one to calculate the income derived by KPM for

Page 85

12:47 1 providing crude oil transport services through pipeline

2 at issue, you would only look at the second table,

3 which, as I understand it, is the only table that

4 relates to income derived from providing those services?

5 Would you accept that?

6 A. Frankly speaking, I think the answer is in the questions

7 that were put before the experts. So you can see it at

8 the beginning of this expert opinion.

9 The expert is answering, in my opinion, to the

10 following questions: first, this expert must calculate

11 the income obtained by Kazpolmunay due to non-licensed

12 activity, namely

13 transportation and subsequent sale of oil through the pipeline

14 belonging to Kazpolmunay; and the second table, which is the second

15 question, the amount of the

16 income received by KPM due to such unlicensed activity,

17 namely transportation of crude oil through the pipeline

18 belonging to Kazpolmunay.

19 That is, if the second table is the answer to the

20 second question, then your statement is correct, if your

21 understanding is that the second question is the amount,

22 total amount of income obtained by Kazpolmunay through

23 carrying out unlicensed activities.

24 And in fact I don't know what you think about this,

25 but any expert opinion, before one is able to provide

any comment on an expert opinion, one must at least know

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12:49 1 all the circumstances of the work of the expert, the

2 documents that he reviewed. Unfortunately what I can

3 say is only that judging from this expert report, the

4 expert apparently replied to the question posed to him,

5 and that's all.

6 THE CHAIRMAN: May I just try to clarify what we just looked

7 at, and if I understood the witness correctly. But

8 I would ask the parties to pick that up, if I got

9 something wrong, at a later stage.

10 It is correct for an expert, of course, to look at

11 what is the mandate -- we all do that -- and then he

12 tries to answer that. If you look at the first page of

13 this, numbers 1 and 2, I notice that this mandate is

14 described:

15 "... to calculate the amount of income derived by

16 [KPM] from unauthorised activity of transportation and

17 subsequent sales ..."

18 And the same appears actually in number 2.

19 So as far as the mandate for the expert was

20 concerned, it seems to be clear that the expert was

21 asked to calculate both. Whether that is a correct

22 calculation for our purposes is another matter,

23 obviously. But the two tables seem to be explained by

24 the two aspects that are mentioned in the mandate.

25 That was not really a question to the witness, but

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12:51 1 to draw the attention of the parties to that. And if

2 you have any further comments on that from either side,

3 you can make them later. But perhaps you also want to

4 pick it up with the witness.

5 MR FLEURIET: With respect to the first mandate, I asked the

6 witness about that earlier, and I believe it was

7 established that none of those numbers in fact relates

8 to transportation at all; they only, exclusively, relate

9 to sales. Because what you have here is just a list of

10 the invoices from KPMs sales of its product.

11 If I understood that incorrectly, I'm happy for the

12 witness to explain it again.

13 A. Well, honestly speaking, once again it is very difficult

14 for me to provide any explanations with respect to

15 calculations made by an expert. It is the function of

16 an expert, and I don't think I possess the necessary

17 competence in this situation to pronounce on what kind

18 of documents the expert had at his disposal, and what

19 actually he was calculating.

20 What I understand from this document, I can see only

21 one thing: the expert was replying to the questions

22 posed to him by the investigator, not by investigator, by an

23 operative officer. And I think that

24 these questions in themselves are not difficult to

25 understand, both the first and the second one. And here

the expert says the first question, and then we have

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12:53 1 a table; the second question, and then we also have some

2 explanations and a table.

3 MR HAIGH: Mr Chairman, I regret having to ask a further

4 supplemental question. I am wondering if I understood

5 the witness correctly, at least. But when he read the

6 two questions on the first page that appear to have been

7 posed to the expert, I understood him to refer to

8 calculating the amount of income derived by KPM from

9 unauthorised activity of transportation, but I didn't

10 hear him say "and subsequent sales". And I wonder if

11 I misheard that, or whether that's how he read it.

12 A. With respect to the first question, judging by this

13 text, the expert was asked about transportation and

14 subsequent sales of oil through oil product pipeline;

15 whereas the second question does indeed concern only

16 transportation of crude oil through the oil pipeline.

17 What is also difficult for me to understand, at this

18 point at least -- and I can't really say now what was

19 contained in the document submitted by the tax committee

20 on 19th November, and why this tax opinion was subject

21 of review by the expert -- I don't really understand

22 this, because the first question starts actually with

23 the wording:

24 "Based on the received Opinion ... of the Tax

25 Committee ..."

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12:55 1 I would wish to assist you, but I'm afraid I can't

2 do this, because the circumstances of the expert's work

3 apparently are not clear.

4 So what I can explain is that apparently the expert

5 had the necessary competence, and he was independent of

6 the investigating authority, and this is the centre for

7 forensic expertise of the ministry.

8 MR HAIGH: Mr Kravchenko, I was really just asking as to the

9 two questions that apparently were posed to the expert.

10 I was listening to you read the text as it was

11 translated to us, and I understood that in the first

12 question, the question was posed in relation to

13 unauthorised activity of transportation and subsequent

14 sales of oil, and that's at least how it appears in the

15 English translation of the document in front of us. But

16 I didn't hear you say it when you read it, and I wonder

17 if the phrase "and subsequent sales of oil" is in the

18 mandate given to the expert in the first question as you

19 look at the Russian text. That's all.

20 A. Yes, in the Russian text in both cases we have

21 "unlicensed activities", but in the first case "and

22 subsequent sales of oil through the oil pipeline".

23 MR FLEURIET: Maybe I can state it more clearly. My

24 understanding is that under point 1 it does in fact say

25 "transportation and subsequent sales", and under point 2

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12:57 1 it only says "transportation". I think "and subsequent

2 sales" under point 2 is a wrong translation.

3 DR NACIMIENTO: Shall we check it?

4 MR FLEURIET: Certainly.

5 DR NACIMIENTO: We could check that now; he could just read

6 it.

7 MR FLEURIET: That's fine. I think that was the distinction

8 he was making between 1 and 2.

9 THE CHAIRMAN: Alright. Continue, please.

10 MR FLEURIET: Let me ask one follow-up question from that

11 exchange; we've had several different answers on it.

12 Would you agree with me that immediately before the

13 first table it says:

14 "... income ... 41,166,014,544 [tenge], including:

15 "Income from sales of the end product."

16 Does it say that in the Russian?

17 A. So you refer to the first question, and the sentence

18 immediately after the heading for the first question?

19 Q. Excuse me. I am referring to the entry just above the

20 first table, which is at the bottom of page 2 on the

21 English version, and it says:

22 "... amounted to [41.166 billion Kazakh tenge],

23 including:

24 "Income from sales of the end product."

25 A. (Not interpreted) Da.

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13:00 1 Q. There is no reference to transportation, right, at that

2 point of this text, is there?

3 A. No. In the Russian version we have this reference. In

4 the Russian text we have: as a result of

5 an investigation of the document supplied for expert

6 examination, it was established that the amount of

7 income obtained as a result of unlicensed activity,

8 namely transportation and subsequent sales of oil

9 through the oil pipeline belonging to Kazpolmunay, constituted

10 the amount which

11 you say, 41 billion. The figures in the Russian text

12 are not clear enough, but apparently it was this amount.

13 Q. Right. And what comes after that in the text?

14 A. And then we have the heading of the table: the amount of

15 income from the sales of final product.

16 Q. Now, if you were to --

17 A. And I think that what we have here is apparently the

18 expert's answer to questions posed by the investigator

19 in connection with the opinion of the tax committee, and

20 probably they are looking into the difference against

21 the opinion of the tax committee, because we

22 have this opinion of the tax committee in the first question but

23 we don't have it in the second one.

24 Q. Okay. Let me just ask you to focus on my questions.

25 Please just provide an answer to the questions I ask.

Going back to the second table, which I believe does

refer to services for crude oil transportation, the

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13:02 1 total here relates to the income derived by KPM from

2 that activity, right?

3 A. Yes, apparently.

4 Q. So if you wanted to calculate ... Actually, let me ask

5 a predicate question first.

6 The crime with which Mr Cornegruta was charged

7 required that he be convicted of gaining illegal

8 revenues in an especially large amount, right? That was

9 the crime under Article 190 of the code?

10 A. Yes. Or rather conjugate with derive of revenues, apparently.

11 The crime itself is illegal

12 entrepreneurial activity without the requisite licences.

13 Q. Is it not an element of the crime, sir, that also

14 illegal revenues in an especially large amount have been

15 earned? That's an actual element of the crime,

16 isn't it?

17 A. Yes.

18 Q. So if you were to consider the amounts of income earned

19 from operation of this pipeline, and if you were to

20 carry out that consideration in the manner in which the

21 Supreme Court mandated in that regulatory resolution,

22 you would, from the figure on this table of

23 41.952 million tenge, you would then subtract anything

24 related to legal activity, right, payment of taxes and

25 other services, as we saw before?

A. Probably so, because this is what the Supreme Court

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13:05 1 says.

2 Q. Right. And by making those deductions, you would get to

3 a profits figure rather than a revenue figure, right?

4 A. Yes, this is correct.

5 Q. Now, let me ask you to turn to the third and last report

6 of this expert: it's the May 18th 2009 report referred

7 to in paragraph 10.3 of your opinion. You can find that

8 behind the next tab, tab 14, and for the record it's

9 Exhibit C-184.

10 A. Can you mention the date once again, please?

11 Q. Yes, it's a report from May 18th 2009. It's behind

12 tab 14 in your binder, and it's Exhibit C-184.

13 A. Yes.

14 Q. This is the third and final report of the economic

15 expert, Mr Askarov, right?

16 A. Yes, apparently so.

17 Q. Can you just take a moment to refamiliarise yourself

18 with this report. (Pause)

19 I'd refer you to what is on the top of the second

20 page in the English version. There are four entries

21 that make references to different time periods. The

22 first one says "from April 2002 to May 2008"; do you see

23 that?

24 A. Mm-hm.

25 Q. Do you know what those time periods correspond to?

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13:08 1 A. I can suppose that this was the period when

2 Mr Cornegruta held the respective position.

3 Q. I believe it's actually, in fact, the time periods

4 during which different managers of KPM and TNG held

5 their respective positions. But I am coming to that and

6 I will have a question for you about it.

7 The question is: do you know how the court in Aktau

8 got to the final figure of 21.675 billion tenge?

9 A. I don't know exactly, but I suppose that they proceeded

10 from expert reports.

11 Q. Yes, and I believe in fact it's this report.

12 Can you tell from your copy of the report that if

13 you add up, under "Conclusions", paragraph 1.3, the

14 total there, 21.673, which is the amount of income from

15 the March 7th 2007 to May 2008 period, and then you add

16 up the very last line of text under paragraph 2, which

17 is again for the March 7th 2007 to May 2008 period of

18 1.935 million tenge, through the two of those, you

19 arrive at the total amount of the fine that the court

20 imposed in this case of 21,675,854,578 tenge? Do you

21 see that?

22 A. Mm-hm.

23 Q. Now, this first amount of income, the 21.673 billion

24 tenge in conclusion 1.3, that says it comes from "the

25 transportation and further sale of oil and condensate".

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13:10 1 But as we saw earlier, that's really just a figure that

2 represents KPMs sales, right? Or to put it

3 differently, that relates to the first table we saw

4 before; it's just now broken down into the period for

5 which Mr Cornegruta was a general director, right?

6 A. I don't really know what the matter is. I would like to

7 explain. It's not that I don't wish to reply to

8 questions, but I was not the supervising prosecutor;

9 I was not the investigator in this case, I was not

10 an expert. And you put questions to me which would be

11 properly addressed to the expert who carried out the

12 expert review.

13 Frankly speaking, I can't even see at once what you

14 are referring to.

15 Q. Well, I would love to be able to put questions to the

16 expert who prepared this report and the others involved

17 in the case. But you are the witness who has testified

18 in this case that everything happened appropriately,

19 right? Your testimony is that there are no grounds not

20 to trust the specified expert opinion; correct?

21 A. Yes. And in this sense, if I need to further explain my

22 witness testimony, I can do that. What I meant was that

23 expert reviews were carried out by the experts who had

24 the proper qualification, and carried out by a body

25 which was not related to the investigation, and it means

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13:12 1 that this was the independent expert review envisaged in
 2 the Kazakhstan law.
 3 Q. Let me ask you about the last entry on this report. Do
 4 you see where it says:
 5 "-- from March 7, 2007 to May 2008 made up
 6 1 935 547 tenge."
 7 Do you see that?
 8 A. Yes, I see it.
 9 Q. And this paragraph 2 refers to amounts for "providing
 10 services ... related to the transportation and further
 11 sale of oil", right?
 12 A. Apparently so.
 13 Q. Would you agree with me that if this expert report is
 14 correct, then the amount of income earned for
 15 transportation services through the pipeline in question
 16 would have been 1.935 million tenge?
 17 A. I'm not sure. What the expert wrote here is apparently
 18 correct. But I can say only what I see here; and if
 19 I see that it is written here, I can confirm it. But
 20 what actually were the premises of the expert's opinion,
 21 what he was working with, I don't know. And I can't
 22 even say on the basis of what documents this conclusion
 23 was made, what were the grounds for appointing this
 24 expert review.
 25 I can confirm that I see in fact what is written in
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13:15 1 this document. In paragraph 2 we have the period from
 2 7th March 2007 to May 2008: the income was 1,935,547
 3 tenge. So I can confirm that these figures are
 4 contained in this expert opinion.
 5 Q. That's right. And if you wanted to then get to a profit
 6 figure for the amount of money made for providing those
 7 services for the period in time during which
 8 Mr Cornegruta was general director, you would, from that
 9 1.9 million tenge, subtract legal amounts, as we saw
 10 earlier in the Supreme Court's regulatory resolution;
 11 correct?
 12 A. It is difficult for me to say if anything has to be
 13 deducted or not. What I know -- and I agreed with you
 14 that it is correct -- [is] that in compliance with the
 15 resolution of the Supreme Court, some deduction has to
 16 be made. But I don't know whether it is this amount or
 17 not. I can't really say.
 18 Q. Do you know how many tenge the prosecution and the court
 19 had to get to to convict Mr Cornegruta of the crime with
 20 which he was charged?
 21 A. I don't remember exactly, but I think it was 20 billion?
 22 Maybe I'm mistaken. We can check it out.
 23 Q. Let's check it out briefly. Let me ask you to turn to
 24 tab 15.
 25 THE CHAIRMAN: Mr Fleuriet, we are getting close to the
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13:17 1 lunch break, so whenever is a convenient time.
 2 MR FLEURIET: Certainly.
 3 THE CHAIRMAN: Would it be now or later?
 4 MR FLEURIET: Let me just get through the end of this topic;
 5 it should be five or ten minutes.
 6 THE CHAIRMAN: Alright.
 7 MR FLEURIET: Behind tab 15, sir, is Exhibit R-58. These
 8 are the elements of the crime of illegal
 9 entrepreneurship. Do you see at the bottom of the page,
 10 under note 1, the latter part of that note reads:
 11 "... profit in an especially large amount."
 12 That's what Mr Cornegruta was convicted of, correct:
 13 having earned profits in an especially large amount?
 14 A. I'm sorry, the Russian text says not "profit" but
 15 "income".
 16 Q. Well, I am reading the English translation that was
 17 provided by Kazakhstan, and it says "profit". But we
 18 will leave that to the side.
 19 Do you see that it says:
 20 "... profit in an especially large amount shall be
 21 understood to mean income an amount of which exceeds
 22 two thousand monthly assessment indices."
 23 A. Yes.
 24 Q. So in order to be convicted of this crime under its
 25 subcategory of an "especially large amount", you had to
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13:19 1 show income or profit -- let's leave that aside right
 2 now -- but the prosecution had to show a figure that
 3 exceeded 2,000 monthly assessment indices, right?
 4 A. Yes, correct.
 5 Q. Are you aware that in 2008 the monthly assessment index
 6 was 1,168 tenge? Does that sound right?
 7 A. Apparently you are right.
 8 Q. So 2,000 of those monthly assessment indices would have
 9 totalled 2.336 million tenge during the relevant time
 10 period in 2008, right?
 11 A. Well, I trust your calculations.
 12 Q. If you go back one tab to the report we just saw, the
 13 final report from the economic expert dated
 14 May 18th 2009 (C-184), the last entry that we looked at,
 15 the total amount there of 1.935 million tenge that
 16 corresponds to providing the services of operation of
 17 this pipeline is less than the 2.336 million tenge
 18 figure that was required to convict Mr Cornegruta of
 19 illegal entrepreneurial activity in an especially large
 20 amount; correct?
 21 A. Well, you made a conclusion in my place. If you mean
 22 that 1.9 billion is smaller than 2.3 billion-something,
 23 it's correct. But I don't know whether I can accept the
 24 rest of your conclusion because I don't know what was
 25 meant by the expert in his expert opinion and I can't
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13:21 1 interpret it in any exact fashion now.
 2 Q. Well, the point, sir, is it not, is that had the court
 3 and the prosecution only relied on the amount of income
 4 generated by providing services in relation to operation
 5 of this pipeline, it would not have been possible to
 6 convict Mr Cornegruta of illegal entrepreneurial
 7 activity in an especially large amount, because the
 8 amount element of that crime was not satisfied, right?
 9 A. I think Mr Cornegruta would not have been sentenced be
 10 it not for specific actions that he was indicted for,
 11 namely performing entrepreneurial activities without the
 12 requisite licence.
 13 Q. What's the answer to my question, sir? Could
 14 Mr Cornegruta have possibly have been found guilty of
 15 the crime of illegal entrepreneurial activity in
 16 an especially large amount had the prosecution and the
 17 court only relied on the income generated through
 18 operation and providing services through this pipeline?
 19 A. Maybe not in an especially large amount. This is from
 20 this amount, just to be precise, so that we have it
 21 correct in the transcript. So out of the amount you
 22 mentioned, you are talking about 1.7 million or
 23 something? I assume that your calculations of the
 24 monthly indicators are correct.
 25 Q. Do you know how much 1.935 million tenge was in
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13:24 1 US dollars in mid-2009? I calculate it as about
 2 US\$12,650. Does that sound about right?
 3 A. It must be correct, yes.
 4 Q. Would you agree with me that in addition to falling
 5 below the threshold necessary to find Mr Cornegruta
 6 guilty of the crime charged, a fine of US\$12,650 would
 7 not have had much impact on KPM?
 8 A. Well, apparently one has to accept that this amount
 9 would be less burdensome for KPM.
 10 Q. Dramatically less burdensome than the US\$145 million
 11 fine, wouldn't you say?
 12 A. Yes.
 13 Q. And to get to that \$145 million amount you have to look
 14 at all the sales of oil through the pipeline, in
 15 addition to the -- that makes up 99% of the figure
 16 arrived at by the court, right?
 17 A. No, it's not correct, and I don't really understand the
 18 question. In order to reach this amount: why should one
 19 reach an amount?
 20 Q. Well, I am just referring to the first chart that we saw
 21 earlier in the expert report that referred only to
 22 sales. My point is simply: to get to \$145 million you
 23 have to consider the sales of oil through the pipeline,
 24 in addition to any amounts that KPM earned by operating
 25 the pipeline, right?
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13:26 1 A. If you mean that in order to calculate something, then
 2 I can agree with you; if you mean that in order to
 3 indict someone, then I absolutely don't agree with you
 4 because no one mentioned any specific amounts. There
 5 were calculations of independent experts, and for me
 6 there are no unclear moments.
 7 MR FLEURIET: I am going to stop there. Thank you,
 8 Mr Chairman.
 9 THE CHAIRMAN: Alright. That fits very well. So we will
 10 have a break to 2.30.
 11 Mr Kravchenko, as you probably know by now, I will
 12 have to ask you not to discuss the testimony with the
 13 parties during the break.
 14 THE WITNESS: Thank you.
 15 (1.37 pm)
 16 (Adjourned until 2.30 pm)
 17 (2.33 pm)
 18 THE CHAIRMAN: Alright, we have a full Tribunal and all the
 19 parties are present. That's a good start. We continue
 20 with the examination, please.
 21 MR FLEURIET: Thank you, Mr Chairman.
 22 Mr Kravchenko, could you briefly describe for me the
 23 process of filing an appeal of a criminal judgment in
 24 Kazakhstan?
 25 A. Well, I believe it's quite simple. For a judgment by
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14:34 1 the criminal court which has not been enforced yet, you
 2 have to file a complaint, an application, and there will
 3 be a court of appeal. The tribunal, consisting of three
 4 members, will consider your appeal.
 5 Q. And it's correct, is it not, that in a criminal case
 6 such as the one at issue here, the party appealing has
 7 15 days in which to file the appeal?
 8 A. That's correct, 15 days upon the judgment being
 9 rendered.
 10 Q. So what happens on a practical level? I presume the
 11 party gets a certified copy of the court judgment, and
 12 then files an appeal to the appellate court; is that how
 13 it works?
 14 A. That's right, exactly that way.
 15 Q. Kazakhstan law does not provide the ability for
 16 a non-party to a case to file an appeal, does it?
 17 A. That's right. That's exactly what it is.
 18 Q. Now, the judgment in Mr Cornegruta's case was rendered
 19 on September 18th 2009. Do you recall that being the
 20 date of the judgment?
 21 A. Yes, I do recall it was approximately at this time that
 22 the judgment was rendered.
 23 Q. Okay, well, just accept my representation that the date
 24 was September 18th. If that's correct, there would then
 25 have been a 15-day window for filing an appeal; correct?
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14:36 1 A. That's right.
2 Q. Are you aware that on September 22nd 2009, four days
3 into that window, the non-party KPM requested
4 a certified copy of the court judgment?
5 A. I believe so, yes. I can agree, yes.
6 Q. KPM was not provided a certified copy of the court
7 judgment until several months later; correct?
8 A. I am not aware of that. I don't know exactly when KPM
9 obtained a copy of the judgment.
10 Q. Let's take this one step at a time. Let me refer you to
11 tab 17, which is Exhibit C-705. Do you see this is
12 a copy of KPM's request for the certified copy of the
13 judgment?
14 A. That's correct; it is indeed that.
15 Q. Right. And this application is made on September 22nd;
16 correct?
17 A. That's correct.
18 Q. You are not aware of any evidence to suggest that the
19 copy of the judgment was sent to KPM in either October
20 or November 2009, are you?
21 A. That's correct.
22 Q. Mr Cornegruta, who did have the official copy of the
23 judgment, appealed the verdict in his case, right?
24 A. That's correct.
25 Q. And the judgment was upheld by the appellate court on

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14:39 1 November 12th 2009; do you recall that?
2 A. Well, probably so.
3 Q. And then on December 29th 2009 the writ of execution was
4 issued against KPM; correct? If you want to refer to
5 that briefly, it is at tab 19, Exhibit C-119.
6 A. I am with you.
7 Q. Do you recall that the court administrator then issued
8 the enforcement ruling against KPM on January 5th 2010?
9 A. He had to do so.
10 Q. And if you look at tab 20, which is Exhibit C-566, you
11 will see that KPM, on January 14th 2010, contested that
12 ruling. And if you look with me on the first page, you
13 will see that at this point KPM again requests
14 a certified copy of the judgment dated
15 September 18th 2009, right?
16 A. That's -- exactly. I am looking at it, yes.
17 Q. Would you agree with me, sir, that if it was not
18 possible for a non-party such as KPM to obtain
19 a certified copy of the judgment in order to raise its
20 appeal, it was unfair for that appeal subsequently to be
21 rejected on the basis that it was not filed timely?
22 A. I would agree only in case two conditions are fulfilled:
23 namely, first, if the representatives of KPM indeed did
24 not take part in this trial; and second, if such
25 representatives did not take part and the judge,

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14:43 1 according to their opinion, breached their rights and
2 did not provide them with a copy, and they have filed
3 an appeal, they have challenged such a decision of the
4 judge.
5 Q. Are you referring to the witnesses who appeared at the
6 trial? Who are these representatives of KPM that you
7 are referring to?
8 A. I know that at least -- well, I recall somewhere in the
9 case materials of this arbitration I read that there was
10 someone who was performing the functions of the head of
11 the company of KPM -- I don't recall his name -- and
12 this person participated in the trial. So this person
13 was aware what it was all about during the trial. And
14 I also know that -- I also think that there are other
15 ways to find out what's going on in court proceedings.
16 Q. Is it your testimony that a fact witness such as that
17 would have had access to a certified copy of the court
18 judgment, as a non-party to the case?
19 A. Well, it would be ridiculous to think that
20 Mr Cornegruta, who was heading the company, could not
21 share his copy of the judgment with the company that he
22 was the head of.
23 Q. He was sitting in a detention facility, was he not?
24 A. As far as I recall, he had at least two lawyers.
25 Q. Would you agree with me, sir, that if the evidence shows

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14:45 1 that KPM requested a certified copy of the judgment
2 within the appeal deadline and that request was refused,
3 it was unfair for the appeal to later be rejected on the
4 basis that it was not timely filed?
5 A. Once again, yes, I would agree, but only if the decision
6 to refuse to provide the copy, if such decision had been
7 challenged or appealed.
8 Q. Alright. Let me refer you now to section 7 of your
9 statement. Again, this is your second witness
10 statement. I believe this is where you discuss the
11 inspections in June and July 2010.
12 A. 2010? Are you speaking about 2010 or 2009?
13 Q. Yes, I am referring to section 7 of your second witness
14 statement entitled, "Inspections of KPM and TNG in June
15 and July 2010".
16 A. Thank you.
17 Q. The first four or five paragraphs of this section -- let
18 me ask you to briefly skim through or read the first
19 three to five paragraphs of this section, in which you
20 discuss the complaint that's been filed by Mr -- and
21 I apologise, I am going to mispronounce the names --22
Mr Sadyrbaev, Mr Makashev, Mr Esenov and Mr
Sagindikov.
23 A. I am ready.
24 Q. As you say in paragraph 7.1, this complaint from these
25 four citizens was received on June 28th 2010; correct?

14:48 1 A. Indeed.
2 Q. As you say, again in the same sentence, the complaint
3 related to alleged:
4 "... non-payment of salaries, mass dismissal of
5 employees, failure to comply with environmental
6 legislation and ... the loss of deposits and ...
7 establishing] a stable social environment."
8 Is that accurate?
9 A. That's correct.
10 Q. Okay. And then if we move on to paragraph 7.6, you say:
11 "Taking into account:
12 "(a) available information on the facts of the delay
13 in payment of salaries ...
14 "(b) the previous record of complaints against KPM
15 and TNG ...
16 "(c) the need for prompt resolution of complaints
17 from [those four citizens],
18 "the GPO ..."
19 That's you, I presume:
20 "... took a decision to initiate and conduct [these]
21 full-scope inspections of KPM and TNG."
22 Right?
23 A. That's correct. Everything is correct.
24 Q. Okay. Now, with respect to 7.6(a), there is no evidence
25 in the record of this case, is there, concerning any

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14:49 1 delays in payment of salaries to workers of TNG and KPM?
2 A. Frankly speaking, I don't know whether there are or not.
3 However, the fact that the salaries were delayed, I know
4 it for sure, and I am absolutely sure in this. There
5 were delays in early 2009, there were delays probably in
6 July/August 2009, and also in February/March 2010.
7 Q. But you've provided no evidence of any such delays;
8 correct?
9 A. Alright, probably there are no such evidentiary
10 materials in the case materials, but it does not mean
11 that there were no delays.
12 Q. Okay, and with respect to 7.6(b), you talk about a:
13 "... previous record of complaints against KPM and
14 TNG, including involvement in breaches of environmental
15 regulations in 2004 to 2008 relating to storage by the
16 subsoil users of drilling waste and [then] a separate
17 failure to pay salaries in February 2010 ..."
18 I believe we covered the salaries point a moment
19 ago. But would you agree with me there's also no
20 evidence in the record of this case regarding breaches
21 of environmental regulations between 2004 to 2008?
22 A. If you haven't seen such evidence, I am prepared to
23 agree with you that the materials of this trial do not
24 contain such evidence. But that does not mean that
25 there is no such fact, or there had been such fact.

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14:52 1 Q. But would you agree with me, with respect to 7.6(c),
2 that these complaints from these four citizens played
3 a significant role in your decision to commence these
4 investigations? Is that accurate?
5 A. Including the complaint from these persons; this was one
6 of the factors.
7 Q. Let's turn to that complaint, if we could. It's behind
8 tab 40. I believe this was Exhibit 1 to your witness
9 statement. Do you recall this complaint?
10 A. Well, I believe so. The documents that we had were
11 produced, and we also had some other documents.
12 Q. I believe this document was submitted along with your
13 witness statement. I hope you remember it. Do you
14 remember it?
15 A. Yes, I do.
16 Q. Okay. Now, the Russian copy of this complaint consists
17 of two handwritten pages; correct?
18 A. Indeed.
19 Q. And it's not four separate complaints by four different
20 citizens; it's four citizens who are sending in one
21 complaint, right?
22 A. Correct.
23 Q. So your testimony is that based on this two-page
24 handwritten note from four citizens -- as well as what
25 you mention in paragraphs 7.6(a) and (b), of which there

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14:54 1 is no evidence in the record -- based on that, you sent
2 out instructions to a number of agencies to investigate
3 this complaint, right?
4 A. That's correct. That was it.
5 Q. Do you recall how many different agencies or ministries
6 you sent out in response to this complaint? You have
7 some of them listed here.
8 A. Well, some five or seven bodies. I don't recall
9 exactly.
10 Q. Actually in one of our briefs we had said it was
11 14 different agencies, in our statement of claim at
12 paragraphs 200-202, but I don't know if it's worth
13 quibbling with you over the number. Would you agree
14 with me that it was at least seven agencies?
15 A. Alright, let's say seven.
16 Q. And it was the very same day, was it not, June 28th,
17 that you issued the instructions to the various agencies
18 to investigate KPM and TNG?
19 A. That's right. However, not investigations but
20 inspections.
21 Q. That's fine, inspections. And we will see that it is
22 the same day if we look at Exhibit C-174, which is
23 behind tab 26, I believe, in your binder.
24 A. It was the 29th.
25 Q. Well, actually, look at the second page where -- at

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14:57 1 least in my English version -- it says "stamp".
2 I presume in the original there's an actual stamp. Can
3 you see that it's been received by KPM on 28th June?
4 A. Yes, I see that. Probably so. They probably received
5 it -- well, I don't know when they received it, but -6
6 Q. Well, I don't know. Let me refer to another document.
7 I am not trying to trick you on this; I'm just trying to
8 establish the date. Let me ask you to look at C-178,
9 which is behind tab 24.
10 If I understand this correctly, again there should
11 be a stamp, this time from TNG, dated June 28th,
12 acknowledging its receipt of this letter from the
13 regional general prosecutor's office, which I presume
14 had received instructions from the principal office in
15 Astana. Is that accurate?
16 A. That's correct. That's true.
17 Q. So as I understand your testimony, you received this
18 two-page handwritten note from four unknown citizens,
19 and on the very same day you order at least seven
20 national agencies to inspect KPM and TNG. Is that your
21 testimony?
22 A. Absolutely right.
23 Q. Is that the way things normally work with your office in
24 Kazakhstan: you just get a complaint from some unknown
25 citizens, and the very same day you send out half the

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14:59 1 government to check it out?
2 A. No, that's not the regular practice as such. However,
3 what is regular practice is in this kind of complaint,
4 or in respect of this type of complaint, and complaints
5 received from this region.
6 Q. Before you sent out at least seven federal agencies to
7 investigate, wouldn't it have been prudent to spend
8 a little time looking into authors of this handwritten
9 note and their allegations?
10 A. When we received this complaint, we approached the
11 prosecutor's office in the region. Of course we did not
12 make any written instructions; we just made a call,
13 a call about what was going on at these two enterprises,
14 and we received some clarifications to the fact that the
15 situation was not that good, to put it mildly, and this
16 social tension was increasing among the employees; and
17 on top of which it was also noticed by other residents,
18 by the population of the region, and it could not be
19 excluded that such a social explosion could affect the
20 entire region.
21 You do not know such a fact, but I could tell this
22 Tribunal the following: this is the region where, in the
23 end of 2011, due to some tensions between the employees
24 of oil enterprises, we had some mass disorder, mass
25 riots, and the employees of a number of enterprises -

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15:02 1 and I underline: of a number of different enterprises in
2 the same region -- were appalled by absence of
3 elementary labour rights.
4 Q. Can I just stop you there, because it's turning into
5 a very long answer. Your counsel can come back to it.
6 You're referring to the end of 2011, after the state
7 takeover; I am talking about 2010.
8 Is it your testimony, as I understand it now, to the
9 Tribunal that you get this handwritten note from four
10 citizens, you make one phone call, and then you send out
11 a minimum of seven national agencies to inspect these
12 companies all in the very same day? Is that your
13 testimony, sir?
14 A. At the very same time, approximately during the same
15 period of time, several enterprises of the same region
16 were inspected in the same manner.
17 Q. Is that a "yes" answer to my question?
18 A. Yes.
19 Q. Mr Kravchenko, isn't it true that the real reason you
20 sent out half the government on June 28th is that you
21 had been instructed to do so by the Prime Minister on
22 June 25th?
23 A. We cannot receive any instructions from the
24 Prime Minister, except for recommendations or
25 applications, requests.

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15:03 1 Q. You cannot receive instructions from the Prime Minister
2 but you can receive recommendations from the
3 Prime Minister?
4 A. He may give us recommendations or he may request us to
5 do something, ask us to do something.
6 Q. And in fact on June 25th -7A. And such recommendations
7 are not binding for us.
8 Q. In fact on June 25th he had in fact requested that these
9 inspections be carried out, and that, sir, is the real
10 reason they were carried out by your office three days
11 later; correct?
12 A. I would like to see if you could show me the document to
13 which you refer where the Prime Minister demanded from
14 us such actions.
15 Q. I will come to the document in a minute. But is it your
16 [recollection] that the Prime Minister had
17 recommended -- you would certainly recall
18 a recommendation from the Prime Minister, would you not?
19 A. Probably, yes. And it would remain somewhere in the
20 materials of the General Prosecutor's Office.
21 Q. Is it your recollection that the Prime Minister, on or
22 about June 25th, instructed you to carry out inspections
23 of KPM and TNG, and that that in fact was the reason
24 that you issued that instruction?
25 A. I cannot recollect that, because at least for two

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15:05 1 reasons: first, I am not aware of it; and second, the
 2 Prime Minister may not give any instructions to the
 3 General Prosecutor. We have a constitution and we have
 4 law on the General Prosecutor's Office, and you may see
 5 that.
 6 Q. Let me ask you to turn to tab 36, which is
 7 Exhibit C-711, and behind it C-711.1.
 8 Under the first paragraph of C-711.1 which at least
 9 in the English -10 A. Pardon me, are you speaking about the
 report to the
 11 chairman of the Agency for Fighting Economic Crimes and
 12 Corruption? Is that the document you are referring to?
 13 The document signed, or allegedly signed, by
 14 Mr Rakhimov?
 15 Q. Yes, I am referring to that report, and specifically to
 16 the first paragraph, where it says:
 17 "I report that according to the protocol decision of
 18 the Prime Minister of [the Republic of Kazakhstan] dated
 19 25.06.2010 the General Prosecutor's Office and other
 20 state bodies were ordered to perform onsite inspection
 21 of the activity of companies 'Kazpolmunay' LLP and
 22 'Tolkynneftegaz' LLP in the Mangystau Region ... "
 23 And my question to you is: does that refresh your
 24 recollection regarding the fact that your office did in
 25 fact receive an instruction from the Prime Minister to
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15:08 1 carry out the inspections of June 28th?
 2 A. No, I do not recall, because this document in my opinion
 3 is falsified.
 4 Q. Are you aware that this report was accompanied by ten
 5 other draft reports of the various inspections that you
 6 had ordered, and that they were all contained in
 7 an email that was sent out on July 9th?
 8 A. No, I am not aware, because I don't even know the source
 9 of this document.
 10 Q. In the second paragraph of this report it says:
 11 "Hence the General Prosecutor's Office of [the
 12 Republic of Kazakhstan] issued an order No. 250 dated
 13 29.06.2010 regarding allocation of inspection,
 14 registered in Administration of Legal Statistics ... of
 15 [the] Mangystau region under No. 217 as of
 16 29.06.2010..."
 17 Do you have a recollection of that order, sir?
 18 A. This report that you produced in the case material, it
 19 has been studied by us. And me personally, I have
 20 requested the agency of financial police, I asked them
 21 if they have this document among their correspondence
 22 and asked them to produce this document, and they gave
 23 me an ultimate answer that there is no such document in
 24 their correspondence.
 25 Moreover, they answered that the chief -
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15:10 1 Q. Sir, let me get you to answer my question. My question
 2 was: do you have a recollection of the order no. 250
 3 that is referenced in the second paragraph? Can you
 4 please answer that specific question.
 5 THE CHAIRMAN: Wait a minute. Let's get this organised.
 6 You ask the questions, and then give the witness the
 7 time to answer. Okay.
 8 MR FLEURIET: My question, sir, was whether or not you
 9 recall order no. 250, dated June 29th 2010, as well as
 10 the registration of that order in the Administration of
 11 Legal Statistics.
 12 A. I do recall that there was an order. But as far as
 13 I know, either the number or the date of this order
 14 has been changed
 15 and both the number and the date of the registration has been
 also changed.
 16 Q. Would you agree with me, sir, that this report contains
 17 a considerable amount of very specific information that
 18 would be very hard to make up?
 19 A. Such as?
 20 Q. Such as these various order numbers and dates in the
 21 first two paragraphs; such as -- I guess I am reading
 22 from the English version; it may be difficult for you to
 23 follow along -- but such as the specific references to
 24 amounts of money, to certain individuals, various
 25 figures about different amounts of tenge.
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15:12 1 Are you really suggesting to the Tribunal that this
 2 document is just made up?
 3 A. Once again, I think it is a forged document.
 4 Q. How is it that you recall an order such as that referred
 5 to in the second paragraph, regarding the allocation of
 6 the inspection, if that was not a follow-on to the
 7 decision of the Prime Minister dated June 25th?
 8 A. You presented this document to the Tribunal. We looked
 9 at it.
 10 Q. Let me ask you one last question about this letter. It
 11 does indicate the involvement of the financial police at
 12 this point in time, end of June/early July 2010, in
 13 these inspections; is that correct?
 14 A. I'm sorry, could you say it once again, please?
 15 Probably there was something wrong with the
 16 interpretation.
 17 Q. I said: the letter does in fact indicate the involvement
 18 of the financial police at this point in time with these
 19 inspections at the end of June/beginning of July 2010;
 20 is that correct?
 21 A. I do not deny that the financial police was involved.
 22 MR FLEURIET: Thank you. I have no further questions.
 23 THE CHAIRMAN: Thank you very much. Re-direct?
 24 DR NACIMIENTO: No questions from our side.
 25 THE CHAIRMAN: Thank you. Questions from our side?
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15:15 1 THE WITNESS: Your Honour, I would like to add some
 2 additional explanations in respect of the last question.
 3 THE CHAIRMAN: I'm sorry, I think the testimony is over.
 4 Of course, you can still feel you want to raise
 5 a question. But basically I think we have to stop it at
 6 some stage.
 7 Mr Haigh?
 8 MR HAIGH: No, thank you.
 9 THE CHAIRMAN: I have one question.
 10 (3.16 pm)
 11 Questions from THE CHAIRMAN
 12 THE CHAIRMAN: Still looking at this document under tab 36,
 13 which you say was falsified -- and of course I take it
 14 as you say that -- but if you look at the second
 15 paragraph, it deals with the inspections you ordered.
 16 And of course it's not disputed that you did order
 17 inspections; what is disputed is why you did that, if
 18 I may put it shortly like that.
 19 "... order No. 250 dated 29.06.2010 regarding
 20 allocation of inspection", and so on, could you say that
 21 this identification is correct, or is it also something
 22 different?
 23 A. In fact we did appoint such inspections. But as far as
 24 I remember, and also having looked through dates and
 25 numbers, the dates and numbers did not coincide.

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15:17 1 I don't remember exactly what did not coincide, but
 2 I think we can provide a more detailed account of this.
 3 I think the numbers were wrong.
 4 THE CHAIRMAN: Okay, that's all from me. Any more
 5 questions?
 6 Alright. Thank you very much. You have been very
 7 patient. That is the end of your testimony. Thank you.
 8 THE WITNESS: Thank you.
 9 THE CHAIRMAN: So we have a five-minute break before the
 10 next witness, right?
 11 (3.18 pm)
 12 (A short break)
 13 (3.25 pm)
 14 MR MEDET SULEIMENOV (called)
 15 (Evidence interpreted)
 16 THE CHAIRMAN: Alright, Mr Suleimenov. Welcome, sir. Would
 17 you be kind enough to read out to us the statement as
 18 well, please?
 19 THE WITNESS: I am aware that in my testimony I have to tell
 20 the truth and nothing but the truth. I am also aware
 21 that if I do not comply with this obligation, I may face
 22 severe legal consequences.
 23 THE CHAIRMAN: Thank you very much.
 24 Respondent.
 25 DR NACIMIENTO: Thank you.

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15:28 1 (3.28 pm)
 2 Direct examination by DR NACIMIENTO
 3 Q. Mr Suleimenov, you have your witness statement in front
 4 of you. Is there anything that you would like to add,
 5 amend or correct?
 6 A. No.
 7 Q. Could you briefly describe your education and
 8 professional background and current position?
 9 A. I graduated from New York State University, majoring in
 10 economics, (In English) minor business administration
 11 (Interpreted), in 1999.
 12 After that, I had a traineeship with a US law firm
 13 in Virginia, McGuireWoods. Then for some time I worked
 14 at the Almaty office until 2001.
 15 In 2001 I moved to KazTransGaz. This was a new
 16 company at that time, and I worked there with the
 17 acquisitions and management of assets.
 18 In 2002 there was a reorganisation of this company.
 19 It was merged, two companies were merged, KazTransOil
 20 and KazTransGaz, into an oil and gas holding, and
 21 I moved to that new company as the manager of budgeting
 22 department.
 23 After that, as the company relocated and merged with
 24 KazakhOil in 2002, I moved to Astana and joined
 25 KazMunaiGas in the capacity of a manager at the

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15:30 1 department of budgeting and supervision of companies.
 2 In parallel I graduated from another university,
 3 obtained a law degree at Kazakhstan University.
 4 In 2004 I moved to joint stock company Exploration
 5 & Production of KazMunaiGas, which emerged as a result
 6 of merger of two daughter companies of KazMunaiGas,
 7 Exploration & Production KazMunaiGas is an operating
 8 company, which directly operates and had in 2004 mostly
 9 two assets: the production in Mangystau region and Atyrau
 10 region. And at
 11 this company, Exploration & Production, I worked at the
 12 asset management department.
 13 One of the functions of our department was to
 14 conduct IPOs of the company, which was arranged in 2006.
 15 And since the IPO a new strategy was approved for the
 16 company under which we were about to expand by
 17 acquiring -- by acquisitions and explorations.
 18 Since that time I moved first to the position of
 19 deputy director of department, and then was promoted to
 20 the director of department, the department for new
 21 projects. One of the functions of my department is
 22 looking for evaluation negotiations and accompanying all
 23 transactions in the area of acquisitions or receiving
 24 new blocks.
 25 Until now, this is my position: the director of
 a department.

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15:33 1 Q. Thank you. There seems to be a little bit of confusion
 2 between KazMunaiGas EP and KazMunaiGas NC. Could you
 3 explain briefly the difference?
 4 A. Yes, of course. The national company is 100% owned by
 5 the state, it belongs to the Government of the Republic
 6 through a national fund; whereas KazMunaiGas Exploration
 7 & Production is an operator of fields. Since 2006 this
 8 company, after the IPO, became public. It is listed at
 9 Kazakhstan Stock Exchange, and its global depository
 10 notes are traded at the London Stock Exchange.
 11 Our company is somewhat different from the national
 12 company since we are more commercially oriented company,
 13 one may say. Everything we are doing is mostly
 14 producing oil; we have no other activities apart from
 15 production and sales of oil.
 16 Q. Thank you. And KazMunaiGas EP made an indicative offer
 17 in the first phase of Project Zenith. Could you
 18 describe to us your indicative offer?
 19 A. In 2008, sometime in July that year, we were contacted
 20 by a representative of the Renaissance Capital bank,
 21 Rusinov -- we knew him fairly well, because he
 22 previously had worked at [ABN Amro bank], which
 23 consulted us on the IPO -- and he addressed a proposal
 24 to us to participate in acquisition of the assets of TNG and
 25 KPM. This was the first time that we learnt about this,

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15:35 1 and we displayed interest in principle.
 2 We sent an email in response to that telephone call;
 3 and in reply to our email, we received a draft
 4 confidentiality agreement. And after we signed this
 5 draft confidentiality agreement, we obtained two
 6 documents: one of them was the
 7 information memorandum. And the other was a process
 8 letter that is covering the process itself.
 9 In compliance with this process letter, we were 10 expected
 10 to submit before the end of September -11 I don't remember the exact
 11 date -- our offer, which
 12 would be based on information contained in the
 13 information memorandum.
 14 We carried out this work. Our indicative offer was
 15 in the amount US\$754 million. And observing certain
 16 conditions, our indicative offer spelt out all the
 17 conditions under which we would keep to this price. One
 18 of the conditions was obtaining access to the data room
 19 containing information, among other things, on the
 20 financial status of the company, geological data of the
 21 enterprise, the technical condition of the entire
 22 infrastructure, marketing, and the legal risks involved,
 23 and other things. So all the standard aspects that are
 24 requested in such cases.
 25 And in addition, according to our corporate

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15:38 1 regulations, before submitting a binding offer we had to
 2 carry out the due diligence, conduct negotiations on the
 3 purchase agreement, and then only submit this package of
 4 documents to our board.
 5 As I remember, on 29th September we submitted our
 6 proposals. After that, we expected that we would
 7 receive a reply within a week. However, there was no
 8 reply. A few weeks passed since then, and we made some
 9 enquiries: what was happening? Why had we not received
 10 anything? We contacted Mr Rusinov from Renaissance
 11 Capital again, and after that we learnt that the company
 12 had decided not to pursue the sales process.
 13 Q. Just to be clear, could you state again the amount of
 14 the indicative offer in phase 1?
 15 A. \$754 million.
 16 Q. And is this equivalent to a fair market evaluation?
 17 A. No, it does not correspond. This is not a market price;
 18 it is an indicator of the degree of interest, I would
 19 put it this way. It is also an indicator to what extent
 20 the potential buyer is prepared and serious in his
 21 intentions to conduct negotiations concerning the
 22 acquisition of these assets.
 23 That is, in order to determine the market price, one
 24 needs more information, and as a rule the market price
 25 is something mutually negotiated, acceptable, and the

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15:41 1 price which satisfies both parties. In order for the
 2 price to satisfy us, we requested to obtain more
 3 information with respect to geology, the production,
 4 with respect to the infrastructure, finance, taxes,
 5 legal risks, et cetera.
 6 Q. And you then also participated in phase 2? Did you make
 7 a binding offer in phase 2?
 8 A. No, our company didn't make a binding offer. After the
 9 second phase, we obtained access to the data room in
 10 2009 in February, in February 2009. We reached
 11 an agreement that we would participate in the second
 12 phase. In March we started retaining consultants,
 13 PricewaterhouseCoopers, Squire Sanders as legal
 14 consultants, RBS Bank and SkyBridge Finance.
 15 Our consultants carried out the work and the due
 16 diligence, produced reports on the results of these
 17 checks, and together with the bank that was expected to
 18 give us its opinion on the fairness of such transaction
 19 for our board. So we carried out this valuation
 20 process, and the outcome of the due diligence and this
 21 valuation showed us that the price of the assets would
 22 be negative, and it made no sense to make further
 23 offers.
 24 Q. Could you explain why you said the price for the assets
 25 would be negative?

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15:43 1 THE INTERPRETER: The interpreter missed something at the
 2 end.
 3 A. We decided not to submit an offer because the price,
 4 according to our opinion, would be negative, and we did
 5 not submit an offer because it made no sense, because
 6 the seller would not accept it.
 7 Q. Was also the Tabyl block up for sale in that phase?
 8 A. The Tabyl block was excluded from the first phase, from
 9 the offered objects, but it was included at the second
 10 phase by the sellers. It was their condition. We did
 11 not carry out the valuation of this block because this
 12 block was at the initial stages of prospecting and there
 13 were no premises to carry out evaluation because nothing
 14 specific was known about it; nothing much had been done
 15 by that time, something that would indicate to us the
 16 value of this block.
 17 Q. You mentioned that you received more information in the
 18 data room. Was there also information regarding the
 19 level of production?
 20 A. Yes, there was such information with respect to the
 21 level of production for previous years, and also planned
 22 production for the subsequent period. I think there was
 23 a business plan. So the actual data plus the business
 24 plan.
 25 Q. What was your observation regarding the levels of
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15:49 1 You were also involved after phase 2 was terminated
 2 and after you dropped out of the bidding process. Could
 3 you describe your involvement?
 4 A. Yes, in 2009 in July we informed the sellers and the
 5 bank, Renaissance Capital, that we would not submit
 6 a binding offer because, in our assessment, the price
 7 was below zero. However, we informed them that -- and
 8 this was well known -- that TNG and KPM experienced
 9 serious problems; it might make sense for them to speak
 10 to the national company at that time.
 11 After that, the national company also -- according
 12 to the information we have, the management also
 13 displayed a certain interest in acquiring these assets,
 14 because everyone was fully aware that these two assets
 15 were in a complicated situation and it was necessary to
 16 do something with these companies in order to normalise
 17 the situation there.
 18 KazMunaiGas displayed its interest. They asked us
 19 to assist them in familiarising themselves with the
 20 situation because we had dealt with the project, had
 21 been working on it for more than a year. In August we
 22 made a brief presentation for KazMunaiGas, informed them
 23 about the outcome of our work that had been carried out,
 24 the due diligence. And I believe it was in August that
 25 the meeting took place between the national company and
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15:46 1 production?
 2 A. Our specialists, technical specialists, also were
 3 involved in valuation of these companies. It was
 4 pointed out that in 2008 these two companies had
 5 a considerable increase in production: about 35%, if I'm
 6 not mistaken. Within one year, the production increased
 7 by 35%. For such companies, for oil and gas companies,
 8 this is unusual, and there must be some serious reasons
 9 for such an increase. Therefore, for us it was
 10 a question: why did such increase occur?
 11 Q. And what is the impact of such a significant increase on
 12 the oilfield?
 13 A. One must clearly understand here why an increase takes
 14 place. If this is a well-justified increase, then
 15 nothing bad would happen to the field. If the increase
 16 is not justified, but happens because of the actions of
 17 the operator, of the field operator -- as a rule, this
 18 can be achieved by just opening the valves, so to say,
 19 and then the well produces the hydrocarbons, gas and
 20 oil, and in this case there is a risk that the pressure
 21 in the vicinity of the well will fall and there will be
 22 a separation of oil and gas. As a result, oil will
 23 become more dense, and the flow of oil will seriously
 24 reduce, which will lead to lower production volumes.
 25 Q. Thank you.
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15:52 1 representatives of KPM and TNG, Mr Lungu, and the
 2 representatives of Renaissance Capital.
 3 Also after that, there was a second meeting which
 4 took place in Amsterdam sometime in November, at the end
 5 of November.
 6 After that, my involvement in this project was
 7 finished.
 8 DR NACIMIENTO: Thank you. I have no further questions.
 9 THE CHAIRMAN: Alright. We come to cross-examination.
 10 MR MOHR: Thank you, Mr Chairman.
 11 (3.52 pm)
 12 Cross-examination by MR MOHR
 13 Q. Good afternoon, Mr Suleimenov. We've handed you some
 14 documents. I'll be asking you to refer to those today
 15 during your examination.
 16 One preliminary question: are you fluent in English?
 17 A. Yes, I am.
 18 Q. Most of these documents that are in your notebook are in
 19 English. So that will make it easier for us to review
 20 those documents together.
 21 Do you have your witness statement in front of you?
 22 A. That's right.
 23 Q. Please turn to paragraph 2.1. In the first two
 24 sentences of this paragraph you state that KazMunaiGas
 25 National Company is a separate legal entity from your
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15:53 1 company, KazMunaiGas E&P; correct?

2 A. That's correct.

3 Q. We are going to be referring to these companies quite

4 a bit today, so I'll do my best to refer to KazMunaiGas

5 E&P as either "the E&P company" or "your company", okay?

6 And I will refer to the KMG National Company as "the

7 national company", I think.

8 So is it also your view, Mr Suleimenov, that your

9 company is not an agency of the state?

10 A. KazMunaiGas Exploration & Production is not a state

11 body, no.

12 Q. But the national company does own 62% of your company's

13 shares, right?

14 A. That's right. I might be not precise. Approximately.

15 It might be 63%. It depends which shares you speak

16 about. There are placed shares, there are voting

17 shares. So depending which shares you speak about, the

18 figure might be different. But it is approximately

19 62-63%.

20 Q. Are you familiar with an academic in Kazakhstan by the

21 name of Martha Brill Olcott? She works at the Carnegie

22 Endowment.

23 A. No, I am not.

24 Q. She is actually one of the experts that has been

25 retained by Kazakhstan in this case. Are you aware of

15:58 1 statement, an accurate description of the relationship

2 between the two companies?

3 A. As I understand, this was quoted from the teaser or

4 memorandum, which lists facts. And the people who are

5 familiar with this document and people who are working

6 in the area of finance, they understand that the section

7 called "Risk factors", which is the section I presume

8 this was quoting from, the purpose of this section is

9 the factors of risk listed in this section of the

10 Document. It's a portion of the document where they

11 speak about all hypothetical possible risks. These kind

12 of risks may be of different probability; they can be

13 basically improbable.

14 However, for the company to defend itself from any

15 risks in the future, we wrote things like that in this

16 document in order to protect the investors from

17 erroneously made conclusions or decisions to invest in our

18 shares.

19 Q. So you are referring now to the investor memorandum that

20 was circulated in connection with the IPO of your

21 company's shares; is that right?

22 A. I believe that this book is -- I don't see any

23 footnote -- referring to our document. But it is my

24 understanding that since I worked on this memorandum and

25 I was responsible for the memorandum, I believe that

this is a quote from the memorandum, and this statement

15:55 1 a book by the name of "KazMunaiGas: Kazakhstan's

2 National Oil and Gas Company", published by the Carnegie

3 Endowment?

4 A. I am not familiar with that.

5 Q. We have the book behind tab 1. This is Exhibit 159 to

6 the expert report of Scott Horton. Can you please turn

7 to page 28. Do you see about two-thirds of the way down

8 the page, there is a heading "KazMunaiGas Exploration &

9 Production's Relationship to KMG"? Do you see that?

10 THE INTERPRETER: I will just repeat the question.

11 A. Yes, I see.

12 Q. That paragraph states:

13 "NC KMG's share of KMG E and P will never drop below

14 60.1 percent, and because of this they will continue to

15 be able to control the majority of votes at general

16 shareholder's meetings, which in turn will guarantee

17 their control over the Board of Directors of the

18 company. This, as noted in the global offering, will

19 [ensure] that NC KMG is able to determine the timing and

20 amount of dividends, to influence the hiring of all the

21 key personnel positions in the company, and to enter

22 into mergers or make acquisitions that are deemed

23 important by the Government of Kazakhstan, but which may

24 be opposed by minority shareholders."

25 My question to you is: is that an accurate

16:00 1 has a certain -- well, a different -- this statement is

2 of a different nature than what you present it for.

3 However, I can see actually a notice, there is

4 a footnote, footnote 66, and there you see that this is

5 from the information memorandum. So most likely this is

6 from the section called "Factors of risk", and in this

7 section you see the information produced in a negative

8 manner or -- so that the investor wouldn't come to

9 erroneous decisions, so that the investor be ready for

10 any outcome of any risks.

11 You could see similar things in other similar

12 memoranda. In other teasers of American companies as

13 well you could see similar kind of information, but

14 respective countries.

15 Q. I'm going to ask you to just answer the question that

16 I asked, which in this case was that you were referring

17 to the disclosure in connection with the IPO; correct?

18 That's right?

19 THE CHAIRMAN: You have to say "yes" or "no", otherwise it's

20 not on the record.

21 A. Very well. Yes, I understand.

22 MR MOHR: KazMunaiGas National Company is owned 100% by the

23 State of Kazakhstan through the Samruk-Kazyna fund;

24 isn't that right?

25 A. Absolutely right.

1 Q. And would you agree that the relationship between the
 2 national company and the government is a very close one?
 3 A. Between the national company and the government?
 4 Q. Yes.
 5 Why don't we turn to page 3 of the book that's in
 6 front of you? For the record, this book was published
 7 in March 2007. Do you see in the second full paragraph
 8 of page 3 it says:
 9 "For now the relationship between KMG and the
 10 government of Kazakhstan is a very close one, as is the
 11 relationship between the family of the president of
 12 Kazakhstan, Nursultan Nazarbayev, and the country's oil
 13 industry."
 14 Is that an accurate statement?
 15 A. I don't think this is a good comparison. It is
 16 incorrect.
 17 Q. You don't believe that the relationship between the
 18 KazMunaiGas National Company and the government is
 19 a close relationship?
 20 A. This relationship is built on current legislation and
 21 governed by the corporate law and current relations,
 22 current legislation.
 23 Q. Kazakhstan has a preemptive right to acquire subsoil
 24 rights or shares in a subsoil user upon the existing
 25 subsoil user's transfer of those rights or shares; you

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16:06 1 Q. It seems to me that that would give your company
 2 a competitive advantage in acquiring subsoil rights
 3 because you wouldn't need to be the highest bidder in
 4 a tender offer in order to enquire those rights; you
 5 could actually wait to see what happens in the tender
 6 offer process, and then after the bidding is done, if
 7 you like where the highest bid is, you could just
 8 acquire the company through the preemptive right.
 9 Do you agree with that?
 10 A. Yes, we could do so.
 11 Q. Turn with me to page 30 of the book in front of you. In
 12 the first full paragraph, the first sentence describes
 13 what we just talked about. The second sentence in that
 14 paragraph says:
 15 "The service agreement also gives KMG E and P the
 16 right to request [National Company] KMG [to] exercise
 17 its rights to enter into direct negotiations for
 18 exploration and production contracts for any unlicensed
 19 oil and gas acreage in Kazakhstan, without engaging in
 20 a tender process, and the right to acquire oil and gas
 21 exploration contracts for such acreage."
 22 Do you see that?
 23 A. I agree. But what I need to clarify: that this only
 24 concerns the land surface of Kazakhstan. This is
 25 limited to land surface.

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16:04 1 are aware of that, aren't you?
 2 A. Yes, I am aware, of course.
 3 Q. When the state exercises that right, it typically does
 4 so through the KMG National Company, doesn't it?
 5 A. According to the legislation, the preemptive right to
 6 which the state is -- the preemptive right belongs to
 7 the national company, as well as to the national fund,
 8 Blagosostoyanie Samruk-Kazyna, and this right is executed by
 9 means of
 10 a decision of an interdepartmental commission at the
 11 Ministry of Oil and Gas.
 12 Q. Are you familiar with the services agreement that
 13 governs the relationship between KazMunaiGas EP and the
 14 national company?
 15 A. Between Exploration & Production and national company,
 16 yes, I am aware.
 17 Q. And that services agreement gives the exploration and
 18 production company, your company, the right to request
 19 is that the state exercise its preemptive rights on
 20 behalf of your company; isn't that right?
 21 A. That's absolutely right. These terms are also stated in
 22 our memorandum and this is an open information.
 23 Q. In fact, that's something that your company touts in its
 24 investor materials on its website as a competitive
 25 advantage, isn't it?
 A. Absolutely right.

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16:08 1 Q. It's limited to onshore as opposed to offshore projects;
 2 is that what you are saying?
 3 A. That's right.
 4 Q. So if, for example, the Tabyll block that was part of the
 5 Project Zenith tender offer, at least during the early
 6 part of 2009, was not under subsoil contract, then
 7 KazMunaiGas National Company or KazMunaiGas Exploration
 8 & Production Company would have been able to negotiate
 9 directly with the government to acquire that interest
 10 without having any competition from other bidders. Is
 11 that accurate?
 12 A. I'm afraid I missed the beginning of your question. You
 13 say that if Tabyll block was not owned by anyone? What
 14 do you mean?
 15 Q. If the Tabyll block, for instance, had not been subject
 16 to a subsoil contract, then the right that we just
 17 talked about would allow your company or the national
 18 company to negotiate for a block like that directly with
 19 the government, without having to go through a tender
 20 process or compete with any other bidders, right?
 21 A. If Tabyll block were not licensed, and if our company was
 22 interested, then yes.
 23 Q. Okay. In paragraph 2.2 of your witness statement you
 24 state that:
 25 "Mr Timur Kulibayev was never part of the management

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16:10 1 of [KazMunaiGas Exploration & Production]
..."
2 Is that correct?
3 A. That's correct.
4 Q. Do you know Mr Kulibayev?
5 A. No, not personally.
6 Q. Are you generally familiar with his role within
7 KazMunaiGas during the time period we are talking about,
8 2008/2009?
9 A. I may be mistaken, but my recollection is he was
10 a chairman of the board of KazMunaiGas, of the national
11 company.
12 Q. Let's look at page 20 of tab 1 in front of you. Again,
13 this is Exhibit 159 to Scott Horton's report. Under the
14 heading "Organisational Structure of the Company", in
15 this report Ms Olcott states:
16 "The supervision of KMG is exercised by a five
17 person board of directors, which is headed by
18 Timur Kulibayev, President Nazarbayev's son-in-law, who
19 holds this post simultaneously with that of
20 Vice-Chairman of the 'Samruk' holding company."
21 And then a couple of sentences further down it says:
22 "His presence likely serves as a way to protect the
23 interest of the Kazakh president and his family. More
24 than anything else, it helps [ensure] that Kulibayev is
25 able to preserve and expand his own political position,

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16:12 1 increasing his likelihood of being the next president of
2 Kazakhstan."
3 In your view, is that an accurate statement of
4 Mr Kulibayev's role and his relationship to KazMunaiGas?
5 A. Well, the fact that he was at that moment -- and
6 probably still is -- the son-in-law, this is something
7 that is written about. I haven't seen the document
8 about it. But as far as I understand, he is the
9 son-in-law of the President, and he is the husband of
10 the President's daughter, Dinara. He also was, prior to
11 heading the board of directors of KazMunaiGas, prior to
12 that he had led [KazTransOil].
13 As for the conclusions why he is there and what are
14 the consequences, this is a personal opinion of the
15 author of this, and I frankly don't know, and I wouldn't
16 agree with this.
17 Q. You also say in that paragraph 2.2 that your company:
18 "... never received [any] instructions from
19 Mr Kulibayev with regard to the assessment and ...
20 purchase of KPM and TNG."
21 Did your company consult with anyone at the national
22 company regarding that potential purchase?
23 A. At what stage do you mean?
24 Q. Well, in paragraph 2.31 of your witness statement you
25 state:

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16:15 1 "Earlier in 2008 and 2009, we informed
[KazMunaiGas
2 National Company] about our participation in the tender
3 for the purchase of [the companies], but we did not
4 receive any support from [the national company]."
5 So you in fact did have communications with the
6 national company about your participation in this tender
7 offer in 2008; correct?
8 A. Yes. As a rule, we have in our company the procedure of
9 obtaining agreement from the strategic committee
10 attached to the board of directors, agreement to any
11 strategic initiatives, and this committee takes up any
12 major decisions before we start looking more carefully
13 into potential objects of acquisition. That is, we
14 inform the board of directors, and in particular the
15 committee for strategies. And a member of the board of
16 directors from KazMunaiGas is a member of the strategic
17 committee.
18 Q. Look with me at paragraph 2.8 of your witness statement.
19 In the second sentence you state:
20 "I should explain that indicative pricing in
21 a transaction is really no guide at all to fair market
22 value or even just the market price."
23 So in your view the indicative offer in a two-phase
24 bidding process could actually be higher than the fair
25 market value of the assets you are bidding for; is that

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16:17 1 right?
2 A. Yes, it may be.
3 Q. And is the inverse also true: that the fair market value
4 could be higher than the indicative offer that a company
5 gives in a two-phase bidding process?
6 A. Yes, of course: it may be both higher or lower.
7 Q. In the next paragraph, 2.9, you note that --
8 THE INTERPRETER: I'm sorry, sir, the interpreter didn't
9 hear what ...
10 A. The indicative price may be both lower or higher,
11 because it is not the market price.
12 Q. In the next paragraph, 2.9, you note that individual
13 bidding strategy can affect how a company sets
14 an indicative offer, and in the second sentence you
15 state that a bidder may bid relatively high in its
16 indicative offer, and then try to knock the price down
17 during due diligence.
18 Doesn't that strategy risk wasting a lot of time and
19 money in due diligence if the amount that you are
20 actually willing to pay doesn't meet the seller's
21 expectations?
22 A. This depends on the strategy of each potential buyer.
23 Someone builds his strategy offering a high price, and
24 subsequently reducing this price as a result of some
25 supporting data. Someone, on the contrary, might first

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16:19 1 declare a lower price, so that the price will not
2 [decrease] so much in the second phase.
3 Q. Okay. Let's look at your company's indicative offer in
4 the first round of Project Zenith. It's behind tab 5.
5 It's Exhibit C-19. On page 2, paragraph (c), this
6 states that your company's indicative offer was
7 US\$754 million on a debt-free and cash-free basis,
8 described as the "enterprise value"; correct?
9 A. Yes.
10 Q. Debt-free, cash-free basis means that you are essentially
11 bidding US\$754 million to buy the assets, the productive
12 assets of the company, but you would not be assuming the
13 company's cash or assuming the company's debts and
14 liabilities; is that right?
15 A. This means that we do not take into account -- in this
16 case we don't take into account the effect of the
17 balance sheet of the two companies. They may have
18 considerable debts, there may be considerable risks,
19 liabilities; or, on the contrary, there might be large
20 assets at the accounts. If the cash, for example, is
21 greater, the cash assets are greater than the risks and
22 liabilities, the price would increase; or if we have the
23 opposite situation, that the debts are greater than the
24 available cash, the price would decrease.
25 Q. I think I understand, but let me just confirm.

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16:22 1 The US\$754 million offer essentially reflects the
2 valuation for just the assets, and without the cash
3 assets; is that a fair description of what's meant by
4 debt-free, cash-free?
5 A. This is the valuation of the assets as such if we, for
6 example, bought not the shares but, let's say,
7 a contract for subsoil use; or, for example, in
8 particular the plant, the unfinished plant. But here
9 one should add also that there are many other items here
10 and these are also conditions for the indicative offer.
11 Q. Now, in section (d), the indicative offer broke down the
12 valuation as US\$100 million for the Borankol field,
13 US\$455 million for the Tolkyin field and US\$199 million
14 for the LPG plant. Is that accurate?
15 A. Yes, quite right.
16 Q. So this offer did not include TNG's exploration rights
17 in the Tabyt block; correct?
18 A. Yes, that's quite right. This was the condition set
19 forth by the sellers.
20 Q. And then in the next section, section (e), that
21 indicates that KazMunaiGas EP, your company, intended to
22 pay for this transaction using its own assets, without
23 resort to seeking financing from third parties. Was
24 that the intent at the time?
25 A. Yes. The company had only completed its IPO and raised

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16:25 1 more than \$2 billion, so we had such capacity.
2 Q. Look with me at paragraph 2.11 of your witness
3 statement. You talked about this some in your direct
4 examination: that you did not receive a response to your
5 indicative offer right away. And then about halfway
6 through this paragraph you say:
7 "In addition, by October 2008, the oil price had
8 practically halved in comparison to summer 2008. KMG EP
9 was therefore not entirely unhappy with the fact that
10 the process was not going ahead because in their offer,
11 the price forecasts for oil and gas were at higher
12 levels."
13 Can you tell me what you meant by that?
14 A. I don't know how much you remember, but back in 2008 the
15 oil prices were at a historical maximum of \$140
16 per barrel, and there were forecasts by Goldman Sachs,
17 for example, that it would reach \$200. Therefore no one
18 knew at that time how far the prices would rise or go
19 down. It was fairly difficult to make a price forecast
20 in order to build a financial model for a period of
21 10-15-20 years.
22 When this process was taking place, as you remember,
23 the financial crisis occurred, the Lehman Brothers
24 bankruptcy. The oil prices plummeted by losing several
25 percentage points every day. No one knew how long it

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16:27 1 would go and what levels would be eventually reached.
2 Many companies therefore were simply shocked; not only
3 oil companies but even financial, law firms, all
4 companies actually.
5 Q. Okay. So, if I understand correctly, what you are
6 saying is that because oil prices had dropped since the
7 summer of 2008, you really weren't disappointed that the
8 process for this transaction wasn't going forward?
9 A. Yes. If we had bought at the prices we initially
10 planned, we would have definitely made a bad investment,
11 since no one knew how low the prices would go and how
12 long the situation would continue. If we had done this
13 purchase, it would be a bad investment.
14 But since the entire process had stopped, in
15 principle we were not disappointed. We of course could
16 understand the sellers, because they were also unaware
17 of how long the prices would keep at the lower levels.
18 So everything was understandable in principle.
19 Q. Prices continued to drop after October 2008,
20 didn't they?
21 A. Yes, that's quite right.
22 Q. In the next paragraph, in paragraph 2.12, you state
23 that:
24 "In February 2009 [your company] contacted
25 Renaissance Capital to enquire whether the sellers were

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<p>16:29 1 still interested in disposing of the companies."</p> <p>2 Who suggested that idea of contacting</p> <p>3 Renaissance Capital in February 2009?</p> <p>4 A. I think it was me.</p> <p>5 Q. If you had not been interested in pursuing the</p> <p>6 transaction in October 2008 because of the decline of</p> <p>7 prices, why were you interested again in February 2009,</p> <p>8 when prices had continued to go down?</p> <p>9 A. Our situation was unique in a sense, because our company</p> <p>10 possessed considerable monetary assets, received after</p> <p>11 the IPO. And 2007 and 2008 were also very good years</p> <p>12 for us: we had about \$4 billion on our balance sheet</p> <p>13 available for investments. And if everything is</p> <p>14 falling, it's a good time for acquisitions; that's</p> <p>15 a normal situation.</p> <p>16 We looked at other assets and bought them. Because</p> <p>17 all the companies at that time found themselves in</p> <p>18 a fairly difficult situation: they had to comply with</p> <p>19 their obligations, which actually each company has, but</p> <p>20 practically all of them suffered because of lack of cash</p> <p>21 at that time. And for us, as an oil company, it would</p> <p>22 be wrong to miss such a commercial opportunity not to</p> <p>23 buy assets.</p> <p>24 We looked at assets not only in Kazakhstan but</p> <p>25 abroad as well.</p> <p style="text-align: center;">Page 149</p>	<p>But as a rule there are two independent directors -2 I don't remember who exactly</p> <p>it was at that time, but -3 and one person from KazMunaiGas.</p> <p>4 Q. You don't remember who the KazMunaiGas representative</p> <p>5 was, the non-independent director on that committee?</p> <p>6 A. I think it was the managing director of KazMunaiGas,</p> <p>7 Askar Balzhanov, but I may be mistaken; also a member of</p> <p>8 the board of directors.</p> <p>9 Q. In paragraph 2.12 you state that your company, on</p> <p>10 24th March 2009:</p> <p>11 "... received an invitation from Renaissance to</p> <p>12 participate in the second stage of the tender ... "</p> <p>13 Was that invitation communicated in writing or</p> <p>14 orally?</p> <p>15 A. I think it was through email.</p> <p>16 Q. And then in paragraph 2.15 you state that after viewing</p> <p>17 the companies' data room, you concluded that the</p> <p>18 companies had a negative worth, and you testified about</p> <p>19 this earlier.</p> <p>20 Negative by how much? What was your valuation in</p> <p>21 the spring of 2009?</p> <p>22 A. I don't remember specific figures, but it was below</p> <p>23 zero: minus 50 or minus 100 million, something like</p> <p>24 that.</p> <p>25 Q. I take it that in this valuation you are referring to</p> <p style="text-align: center;">Page 151</p>
<p>16:32 1 Q. Had you heard, prior to your decision to recontact</p> <p>2 Renaissance Capital in February 2009, that the sellers</p> <p>3 had decided to re-initiate the process and were in</p> <p>4 discussion with other oil companies?</p> <p>5 A. No, I hadn't heard.</p> <p>6 Q. What was Renaissance Capital's response when you</p> <p>7 contacted Renaissance in February?</p> <p>8 A. They asked us to wait while they contacted the sellers</p> <p>9 and would discuss our proposal with them.</p> <p>10 Q. Did you consult with anyone of the national company</p> <p>11 about that decision to recontact Renaissance Capital in</p> <p>12 February 2009?</p> <p>13 A. No, I didn't.</p> <p>14 Q. I should have asked you this earlier, but when you did</p> <p>15 interact with the national company regarding the</p> <p>16 Project Zenith process, who was it at the company that</p> <p>17 was your primary point of contact?</p> <p>18 A. I think I mentioned that it's not one person, but we</p> <p>19 have a strategic committee at the board of directors</p> <p>20 which comprises several persons, including our</p> <p>21 independent directors.</p> <p>22 Q. Who was on the strategic committee of the board of</p> <p>23 directors at that time, 2008/2009, of the national</p> <p>24 company?</p> <p>25 A. I don't remember. I don't remember now specifically.</p> <p style="text-align: center;">Page 150</p>	<p>the value of the company's assets minus its liabilities.</p> <p>2 So this is a different valuation metric than the</p> <p>3 cash-free, debt-free valuation we talked about earlier,</p> <p>4 right?</p> <p>5 A. In addition to the debt and cash there are also risks</p> <p>6 linked to the activities of the company, which are not</p> <p>7 entered into the balance sheet but were discovered in</p> <p>8 the due diligence process. They were identified and</p> <p>9 evaluated, with the assistance of our consultants, in</p> <p>10 monetary terms.</p> <p>11 Q. I see. Well, I want to make sure I understand what</p> <p>12 debts were included in the liability side of that</p> <p>13 valuation. Let's look at some of the different debts</p> <p>14 that you reference in your witness statement.</p> <p>15 In paragraph 2.17 you reference \$531.1 million of</p> <p>16 total debt on Tristan Oil notes. Was that included in</p> <p>17 the liability side of the negative valuation?</p> <p>18 A. Yes, of course, and not only these figures.</p> <p>19 Q. So other debts that you discovered during the due</p> <p>20 diligence process were included in the liability side of</p> <p>21 that valuation; is that what you are testifying?</p> <p>22 A. Absolutely right.</p> <p>23 Q. Maybe we will see some of those in section 2.23 of your</p> <p>24 witness statement. You reference there, in 2.23(a):</p> <p>25 "A USD 1 billion claim by the Financial Police</p> <p style="text-align: center;">Page 152</p>

16:39 1 regarding the unlicensed operation of main oil and gas
2 pipelines ..."
3 Was that claim included in the liabilities side of
4 that valuation?
5 A. Absolutely.
6 Q. What about the "USD 87 million claim for additional tax
7 payments" in 2.23(b): was that included in the
8 liabilities side of that negative valuation?
9 A. Yes, it was.
10 Q. What about the "USD 29 million claim for payments of
11 export duties" referenced in part (c): was that included
12 on the liabilities side of the balance sheet valuation
13 that turned out to be negative in the spring of 2009?
14 A. Yes, of course.
15 Q. Is the same also true for the items referenced in
16 paragraph 2.23(d) and (e): the "USD 95 million loan
17 obtained by an affiliate company Montvale" and the
18 "USD 60 million loan obtained by the affiliated company
19 Laren"?
20 A. That's right, both.
21 Q. Let's go back to paragraph 2.16. You state in this
22 paragraph:
23 "One of the principal issues that we discovered
24 during the due diligence and that we were concerned
25 about was the security in place between the bond holders

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16:41 1 and Tristan Oil whereby KPM and TNG were the security
for approximately \$430 [million] worth of debt (at that
time)."
You were aware of that from reading the offering
memorandum that was distributed in the summer of 2008,
weren't you?
A. Which memorandum do you mean?
Q. Well, we can look at it. It's Exhibit C-70, and it's
behind tab 6 in your binder. This is the offering
memorandum that you received in connection with
Project Zenith, right?
Turn to page 8, which has a "Transaction summary".
If you look three paragraphs down, you will see this
states:
"KPM and TNG are guarantors of the [10.5%] Senior
Secured Notes due 2012 ... issued under the Indenture
among Tristan Oil ... KPM, TNG and Wells Fargo Bank ...
as Trustee, dated December 20, 2006 (the 'Indenture')."
And it says that:
"There are currently US\$420 million principal amount
of Notes outstanding under the Indenture."
So your company was aware of those notes and the
fact that KPM and TNG were security for those notes at
the time that it made the indicative offer in 2008;
correct?

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16:43 1 A. Yes, we were aware of the fact, but we were not aware of
2 the details of these deeds, of the deeds containing
3 quite significant obligations of the two companies, KPM
4 and TNG, on top of the information produced here.
5 Q. If you look two paragraphs down, it says:
6 "Potential buyers should carefully read 'Indenture'
7 sub-section on p. 67 in order to understand the
8 implications of an acquisition of the Assets under the
9 Indenture."
10 I assume you would have read that before making the
11 indicative offer, so let's turn to page 67.
12 Page 67 provides some information about the amounts
13 of the debts pursuant to the Tristan loan and the
14 interest rate and the maturity of the debts under
15 table 45; you see that, right?
16 A. Yes, I see.
17 Q. And then in the last paragraph of the page it states
18 that:
19 "... under the Indenture, any sale of all or
20 substantially all of the properties or assets of KPM or
21 TNG, or any ... sale of more than 50% of the voting
22 stock of KPM and TNG, constitutes a 'Change of Control'
23 under the Indenture."
24 And it goes on to say that upon a change of
25 control, the indenture requires that each note-holder

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16:45 1 would have to repurchase "all or any part of their Notes
2 at a purchase price equal to 100% of the principal of
3 the Notes repurchased plus accrued and unpaid interest."
4 So you were aware of that provision of the indenture
5 at the time that you made the indicative offer in 2008
6 also, right?
7 A. Yes, based on the information produced here.
8 Q. You state in paragraph 2.18 of your witness statement:
9 "The negative of TNG's and KPM's business was also
10 confirmed by the value of the bonds of Tristan Oil on
11 the market in 2009."
12 Right? And that's because at that time those bonds
13 were trading at a discount: they were trading around 25%
14 of their original face value. Is that right?
15 A. Yes, these notes were in free circulation on the market
16 and anyone could go on the website and see the current
17 price of those notes. I don't recall exactly, but
18 I believe that it was the lowest price at which they
19 traded in early 2008 was approximately 18 dollar cents.
20 Q. Wouldn't you agree that there are numerous factors that
21 can affect the market price of securities that are
22 traded on public markets, right?
23 A. Yes, I do.
24 Q. For example, in paragraph 2.24 you reference that in the
25 spring of 2009, during your due diligence, you:

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16:48 1 "... became aware of some questions from the
2 Ministry of Energy and Mineral Resources to the owners
3 of TNG and ... KPM on the legality of obtaining the
4 rights in TNG and KPM.
5 Was that one of the risks that you factored into
6 your analysis of whether to pursue an acquisition of
7 those companies?
8 A. Yes, of course.
9 Q. So it stands to reason that that's also a risk that
10 holders of bonds or purchasers of bonds on the public
11 markets might take into consideration, and that might
12 affect the value of publicly traded bonds, right?
13 A. As you just said, any factors may affect the prices. So
14 I cannot deny that any kind of information that became
15 public -- or not even public -- any kind of information
16 may affect the price or does affect the price.
17 Q. Okay. If you look back at paragraph 2.18, you state in
18 the last sentence:
19 "This relation ... "
20 And I assume that you are referring to the trading
21 price of the bonds:
22 "This relation shows that when it comes to the bond
23 market, the real value of the underlying assets and the
24 risks associated with the redemption of the proposed
25 value of the company was indeed very low at that

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16:50 1 moment."
2 In fact it could have been factors other than the
3 real value of the underlying assets that was affecting
4 the price of the bonds at that time, couldn't it? It
5 could have been all the other risk factors that you
6 identified in your witness statement, right?
7 A. I'm afraid I did not understand the question.
8 Q. Well, your witness statement seems to suggest that the
9 bonds were trading at a discounted price because of the
10 real value of the underlying assets. But isn't it
11 possible that the reason why the bonds were trading at
12 a discounted price was because of all the other kinds of
13 risks that you disclosed and described in your witness
14 statement that really didn't have anything to do with
15 the physical assets of the companies?
16 A. Well, I don't know what information was available to the
17 owners of the notes, and for what reason they sold the
18 notes with such a discount. But since we are speaking
19 about something other than assets, about companies which
20 have balance sheets and have risks, it is quite likely
21 that they had information about the financial status of
22 the companies.
23 Q. If I understood your education and work background
24 correctly, you really don't have a technical background
25 in geology or petroleum engineering, right?

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16:52 1 A. I don't have any technical education.
2 Q. You make some statements in paragraphs 2.19, 2.20 and
3 2.21 that are technical statements about the KPM and TNG
4 fields. I note that you use words like your company:
5 "... had the suspicion that TNG had dramatically
6 sped up ... extraction ... "
7 In 2.21, in the last sentence, you say:
8 "This could have adversely affected the level of
9 recoverable reserves ... "
10 That's really just all based on what you've heard
11 from other people, right?
12 A. That's right. I am not alone in my work in the company;
13 we have a whole team of people working in the department
14 for development, and we have quite a few experienced
15 geologists and explorers and oil experts, and they may
16 give relevant recommendations on the matter. But since
17 I've been working for quite some time as a user of such
18 conclusions, I understand what this is all about, and
19 I can understand the serious nature of one or the other
20 issue.
21 Q. You referenced earlier that in the course of your
22 analysis in the spring of 2009 you engaged some outside
23 consultants to assist you, and I think you mentioned
24 PricewaterhouseCoopers, Squires, Sanders & Dempsey and
25 RBS or Royal Bank of Scotland; correct?

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16:54 1 A. That's right.
2 Q. And you mentioned another one, but I'm not sure I caught
3 the name. Was that SkyBridge Finance?
4 A. The name of the company is -- yes, it might be SkyBridge
5 Finance. It's a Kazakhstan investment bank. We only
6 have three or four such banks, so ...
7 Q. Turn with me to tab 10, which is Exhibit R-41. This is
8 a letter from Mr A Aubakirov of your company to
9 Mr Karimov of the national company, dated
10 October 21st 2011; is that right?
11 A. Yes. I am looking at the translation of our letter.
12 Q. There is a Russian version behind, if you prefer to look
13 at that one. Have you seen this letter before today?
14 A. Yes, of course.
15 Q. On the attachments line on the second page of this
16 letter, this indicates that a legal due diligence report
17 of 384 pages, a financial and tax due diligence report
18 of 182 pages, a presentation on asset assessment as at
19 September 2008 of 17 pages, and a presentation on asset
20 assessment as at June 31st 2009 of 89 pages will be
21 enclosed with this letter, actually sent in electronic
22 format.
23 Were those documents sent to KazMunaiGas National
24 Company?
25 A. Yes, of course.

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16:57 1 Q. Do you know if KazMunaiGas National Company shared those
 2 documents with the Ministry of Energy and Mineral
 3 Resources, or any other agencies of the Kazakhstan
 4 Government?
 5 A. I don't know.
 6 Q. Were you aware that the Tribunal has directed that those
 7 documents be produced in this case, and that the
 8 respondent has declined to produce them on the basis of
 9 confidentiality?
 10 A. I don't know that.
 11 Q. For the record, that was an annex to Procedural Order
 12 No. 2 of 3rd February 2012; item 12 in that order.
 13 What was the conclusion in the presentation on asset
 14 assessment as at September 2008; do you recall?
 15 A. Well, it was a negative assessment. It was
 16 a presentation for us, for our consultants. We looked
 17 through it and decided not to proceed with this project,
 18 not to make any offers.
 19 Q. Am I correct that you are now just referring to the
 20 asset assessment as of June 31st 2009?
 21 A. Yes.
 22 Q. I actually had asked what the valuation was in the
 23 presentation on asset assessment as of September 2008.
 24 Do you remember the valuation provided in that report?
 25 A. Yes, I do remember. The assessment was according to our
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16:59 1 indicative offer.
 2 Q. Which outside consultant prepared that report?
 3 A. Are you speaking about the presentation?
 4 Q. Yes, the September 2008 presentation.
 5 A. It was our own presentation and our own assessment of
 6 our company.
 7 Q. I take it the legal due diligence report was prepared by
 8 Squire, Sanders & Dempsey?
 9 A. That's right.
 10 Q. What issues were Squire, Sanders & Dempsey instructed to
 11 address?
 12 A. The company was responsible for the legal portion of due
 13 diligence related to all the matters of contracts,
 14 property rights, legal risks, other risk disputes,
 15 labour disputes; any other aspects of legal nature.
 16 Q. Would that have included title issues?
 17 A. Naturally.
 18 Q. When was that report prepared?
 19 A. I cannot give you the exact date, but I believe it was
 20 in June/July -- June most likely -- 2009.
 21 Q. And did that report conclude that there were any title
 22 or other legal issues that would preclude KazMunaiGas
 23 E&P from moving forward with an acquisition?
 24 A. Normally a consultant produces a list of the facts that
 25 were revealed and a list of recommendations, and in the
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17:02 1 part of recommendations I recall that they recommended
 2 to either verify or they wanted to have some indemnities
 3 on behalf of the seller in case -- in certain
 4 situations.
 5 Q. When do you recall first being contacted by any
 6 representatives of the government from the MEMR or the
 7 Ministry of Oil and Gas regarding this dispute?
 8 A. As far as I remember, this was after the year 2010;
 9 probably 2011, early in 2011.
 10 Q. And what did the government agency request that you
 11 provide?
 12 A. We received their request to provide information. The
 13 first request for information was declined. They called
 14 and asked why.
 15 Q. And what did you tell them?
 16 A. I told them when we received that request we had carried
 17 out some work concerning confidentiality, and according
 18 to our confidentiality agreement with KPM and TNG, such
 19 reports could not be disclosed until June or July 2011,
 20 when the confidentiality agreement would expire.
 21 Q. Were you aware that when my clients' assets in
 22 Kazakhstan were seized in the summer of 2010, they were
 23 put into trust management that was managed by
 24 KazMunaiGas?
 25 A. Maybe there was something not exact with the
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17:06 1 translation. Could you repeat the question, please?
 2 Q. Yes. Were you aware -- are you aware -- that in the
 3 summer of 2010, when my clients' assets were seized by
 4 the Government of Kazakhstan, they were put under the
 5 control of KazMunaiGas or a subsidiary of KazMunaiGas?
 6 Are you familiar with that?
 7 A. I've heard about this. I've heard such information.
 8 Q. Do you know what work has been done in the Borankol and
 9 Tolkyin fields since July 2010?
 10 A. No.
 11 Q. Do you know why KazMunaiGas has not paid any of the debt
 12 or the interest obligations on the Tristan debt out of
 13 the proceeds of the operations of those fields that are
 14 being held in a trust account?
 15 A. I don't know.
 16 MR MOHR: Thank you. I pass the witness. Thank you.
 17 THE CHAIRMAN: Alright.
 18 DR NACIMIENTO: No questions, thank you.
 19 THE CHAIRMAN: No questions? That makes things easier, of
 20 course.
 21 Any questions from my colleagues?
 22 MR HAIGH: No, thank you.
 23 THE CHAIRMAN: No? Alright.
 24 Thank you very much indeed.
 25 We are a bit early. It depends a little bit what we
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<p>17:08 I could do with the next witness: if that takes longer, it 2 may make sense to start that tomorrow morning. 3 I should perhaps tell you that I would be grateful 4 if we tomorrow evening could finish at 5 o'clock sharp, 5 because I have to catch a plane back to Germany for 6 a day, and I want to make sure that I get it. So half 7 an hour early. Just to tell you what the planning is 8 for tomorrow. 9 MR SMITH: Mr Chairman, I think that will not be a problem. 10 Because the respondent chose not to use all of its time, 11 we have moved more rapidly than we had anticipated. So 12 we have been in consultation. Tomorrow I believe we can 13 handle Mr Rakhimov and Mr Turganbayev. I believe the 14 other witnesses that remain for examination actually 15 will not be present in Paris until Monday. 16 We also have worked with just looking at the 17 schedule, and have informed counsel for the respondent 18 that we will decline to cross-examine Mr Akhmetov, 19 Mr Smagulov and Mr Aldashev. So what that will leave us 20 with for Monday is the video examination of Dr Kim. We 21 have also agreed to conduct a video examination of the 22 other Mr Rakhimov, rather than insisting that he travel 23 to Paris because of visa issues. 24 We also have then Mr Aubakirov, Mr Ongarbaev, and 25 I will not attempt the pronunciation, but ...</p> <p style="text-align: center;">Page 165</p>	<p>INDEX</p> <p>PAGE</p> <p>MR HERVE CHAGNOUX (called)..... 1 Direct examination by DR NACIMIENTO 1 Cross-examination by MR MOHR..... 10 Questions from MR HAIGH..... 38 MR ANDREY KRAVCHENKO (called) 41 Direct examination by DR NACIMIENTO 42 Cross-examination by MR FLEURIET 60 Questions from THE CHAIRMAN..... 121 MR MEDET SULEIMENOV (called) 122 Direct examination by DR NACIMIENTO 123 Cross-examination by MR MOHR..... 132</p>
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<p>17:09 1 THE CHAIRMAN: Mr Baymaganbetov, was that the one? 2 MR SMITH: It was. 3 THE CHAIRMAN: Okay. Alright. That means that we only have 4 two witnesses available tomorrow, right? 5 MR SMITH: That is correct. 6 THE CHAIRMAN: Is that correct, respondent? 7 DR NACIMIENTO: Yes. 8 THE CHAIRMAN: Okay. And that will not mean that we have to 9 go beyond 5 o'clock or so? 10 MR SMITH: No, I think we will have run out of time if we do 11 that. So we will not go beyond 5 o'clock. 12 THE CHAIRMAN: Yes, okay. Thank you very much. Alright. 13 So that means that we can, without hesitation, stop 14 now, slight early today, and we will see you at 9.30 15 tomorrow morning. Thank you. 16 (5.11 pm) 17 (The hearing adjourned until 9.30 am the following day) 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 166</p>	
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