

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 5

Friday, 5th 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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FOR THE TRIBUNAL

KATHERINE SIMPSON, Secretary to the Tribunal

INTERPRETERS

ALEXANDRE TCHEKHOV, Russian-English Interpreter
NATALY HOLM, Russian-English Interpreter

09:30 1 Friday, 5th October 2012

2 (9.35 am)

3 MR ARMAN TESTEMIROVICH RAKHIMOV (called)

4 (Evidence interpreted)

5 THE CHAIRMAN: Mr Rakhimov, welcome, sir. You will testify

6 in Russian, I take it?

7 THE WITNESS: Yes, I am going to testify in Russian.

8 THE CHAIRMAN: Okay.

9 If you would be kind enough, Mr Rakhimov, to read

10 out the declaration that I think you have in front of

11 you in Russian.

12 THE WITNESS: Yes, I understand everything here.

13 THE CHAIRMAN: It's not only that you understand it, but do

14 you confirm everything you read?

15 THE WITNESS: Yes, I confirm.

16 THE CHAIRMAN: Alright.

17 Respondent.

18 DR NACIMIENTO: Thank you Mr Chairman.

19 (9.36 am)

20 Direct examination by DR NACIMIENTO

21 Q. Mr Rakhimov, you have submitted three witness statements

22 in this arbitration. Is there anything that you would

23 like to add or amend?

24 A. No, everything is correct on the whole.

25 Q. Could you briefly describe your educational background

Page 1

09:36 1 and your current position?

2 A. I graduated from Kazakh State Law University. I work

3 currently at the Agency for Combating Corruption and

4 Economic Crime in Kazakhstan, as the senior investigator

5 of especially important cases at this department.

6 Q. Could you describe the functions of the financial

7 police?

8 A. The bodies of financial police belong to the system of

9 law enforcement bodies of the Republic of Kazakhstan,

10 and there is a special law on law enforcement services.

11 The key function of the financial police is

12 providing economic security for the country, combating

13 corruption, securing the rights of citizens, and

14 protection of small and medium-sized enterprises. The

15 financial police has also the functions of investigation

16 [of] operative activity and pre-trial investigation.

17 Q. Thank you.

18 Mr Rakhimov, you participated in a search that took

19 place in the offices of TNG and KPM starting on

20 6th May 2009. The witness Stejar of claimants was asked

21 in direct examination some questions by his counsel.

22 I would like to read from the transcript. I am

23 reading from the transcript Day 3, page 34, line 14, to

24 page 35, line 13.

25 The answer of Mr Stejar is to the question of who

Page 2

09:38 1 was present, and regarding the witnesses who appear in

2 the protocol signed after the search:

3 "Answer: In the first minutes we have two

4 witnesses, and in the second minutes there are two other

5 persons stated as witnesses.

6 "Question: Were you introduced to any of these four

7 witnesses during the search?

8 "Answer: No. When the search started, these

9 witnesses were not there.

10 "Question: Did you ever see these witnesses during

11 the search?

12 "Answer: During the search, these witnesses --

13 I did not see these witnesses during the search; they

14 were not introduced to us.

15 "Question: Did these witnesses sign the minutes of

16 the search?

17 "Answer: If I may, I could clarify.

18 "On the 8th, when these minutes were signed, the

19 officials of the financial police came to our office and

20 I disagreed with certain sentences in these minutes.

21 For this reason we followed the officials to the

22 financial police office, they redrafted the minutes, and

23 accordingly for the first time I met the witnesses.

24 These were the people who were there at the moment when

25 the minutes were signed.

Page 3

09:39 1 "So they were only present during this short moment

2 when the minutes were signed. Prior to that moment,

3 there had been no witnesses."

4 Mr Rakhimov, can I refer you to the protocol of the

5 search: it's Exhibit C-114. I am going to ask the

6 witness to take a look both at the Russian and the

7 English version.

8 A. I haven't got the English text.

9 Q. There are two protocols signed after the search.

10 Mr Rakhimov, can you briefly describe the search and who

11 was present and how the protocols were signed?

12 A. The search was conducted in accordance with the Criminal

13 Procedural Code. That is, first we received the

14 prosecutor's sanction for carrying out this action.

15 This action was declared to Mr Stejar, if I remember

16 correctly. And then before the start of the search we

17 had a conversation with Mr Stejar where I explained to

18 him the essence of these investigative actions, and we

19 came to a common opinion that it was necessary to carry

20 out this investigative action. And we also gathered the

21 staff, those people who were at the office at that time,

22 and we explained to them that the search would be

23 conducted, so that they should remain calm.

24 As for the process of the search itself, it's true

25 that in the -- I'll check once again, and I see it --

Page 4

09:42 1 that there were four search witnesses present who were

2 explained -- received the explanation concerning their

3 right; and there is even a wording to this effect.

4 Their obligations were explained to them: this is

5 an obligation under the Procedural Code that they must

6 be present, they must comment and make -- note remarks

7 with respect to the process of the search.

8 After the completion of this issue -- and I see here

9 these were Stejar and the head of security service of

10 KPM, Temirhanov -- noted their remarks in the minutes

11 about the conducted action, and they were both given the

12 opportunity to make remarks. Temirhanov says "no

13 remarks" and signs, and in the second minutes Mr Stejar

14 also says no declaration -- there's a special column,

15 "Declarations or remarks": no remarks, no declarations.

16 The minute has been read, and it is a handwritten note

17 I think by Mr Stejar.

18 The minutes are correct, I've read it and signature.

19 That's all I can say.

20 Q. Why are there two protocols?

21 A. I can explain it by the fact that the investigative

22 action was planned by myself for the afternoon of the

23 day, in order not to distract the staff from their

24 current duties. That's the first thing.

25 Before the start of the search, I knew for certain

Page 5

09:47 1 position at that time?

2 A. As he introduced himself, I say that the head of

3 security service and advisor on security issues,

4 Mr Temirhanov Z.

5 Q. And if you look at the signature page of the second

6 protocol, who signed this from claimants' side?

7 A. Mr Stejar.

8 Q. And if you look at the witnesses of both protocols, is

9 this the signature of the witnesses indicated in the

10 beginning?

11 A. Yes, exactly.

12 Q. On both protocols? On both?

13 A. Yes, that's correct.

14 Q. And were those witnesses present during the search?

15 A. Yes, of course. This is obligatory; they must be

16 present at such a serious action.

17 Q. Can you let us know when the protocols were signed?

18 A. The minutes or protocols were signed after the

19 completion of the investigative action on the same date,

20 7th May.

21 Q. On 8th May or -- and what time?

22 A. It was on 7th May.

23 Q. Let's get the date straight. At what date did the

24 search start?

25 A. The search started in the evening of 6th May, and my

Page 7

09:44 1 that the office of KPM and TNG are not small by Aktau

2 standards, and therefore I decided to have two teams

3 searching the premises. The first was headed by

4 myself -- I am speaking from my memory -- so I started

5 from the ground floor, went to the second floor, and the

6 second team was headed by one of the investigators,

7 searched the third floor. So this was done in order to

8 complete the process as soon as possible.

9 Q. So you had two teams, and we just heard you led one team

10 and another from the financial police led the another

11 team. Who was present on each team from claimants'

12 side?

13 A. Sorry, I would like to correct you. I initiated the

14 search. I was the head of the search and operative

15 team. The search itself was delegated to another

16 investigator, and the search that I conducted was

17 witnessed by two persons. One of them was the head of

18 the security of the company, Mr Temirhanov.

19 Q. And if we look at the signature pages, if you look at

20 the signature page of the first protocol -- can you take

21 a look at the signature page.

22 A. Yes.

23 Q. Who signed this on claimants' side?

24 A. Mr Temirhanov ZA.

25 Q. And in which function did he sign it? What was his

Page 6

09:49 1 minutes say at 00.40 on 7th May and the second

2 minutes, 21.50 on 6th May, and completed 04.15 on

3 7th May 2009. 7th May.

4 Q. And where were they signed?

5 A. They were signed at the office of KPM and TNG.

6 Q. And Mr Stejar was present?

7 A. Not only Mr Stejar; the head of security, Mr Temirhanov;

8 and the lawyer, Azamat Kaunev, Mr Cornegruta's lawyer,

9 he was also present at the search, and he watched that

10 there should not be any violations. In fact, I could

11 have asked for him to leave the premises, because he was

12 not defending KPM, he was defending Mr. Cornegruta, but I

13 allowed him

14 Q. I take you back again to what Mr Stejar stated as his

15 testimony in this arbitration. He says the minutes were

16 signed on the 8th; they were signed at the police

17 station, outside of the office; and that they were

18 redrafted; and that the witnesses who signed those

19 minutes were not present during the search, that they

20 were present only during the few moments in which the

21 minutes were signed. What is your position on that?

22 A. I can say only one thing: that the minutes were signed

23 on the 7th, it is correct. Mr Stejar, first he signed

24 saying that "No remarks" with respect to the process of

25 the search, "I've read the minutes" and signed this. And

Page 8

09:52 1 he also makes a note that he received the protocol on
 2 8th May, and also his signature.
 3 That is, I am not saying that he received the
 4 protocol, the minutes, on the 7th. He makes a note that he received
 the protocol on the 8th, but the minutes themselves were
 5 signed, and we have his separate signature , on the 7th of May.
 6 Q. Let's take a look at the signature page again. It lists
 7 the declarations and the remarks by the participants; it
 8 lists the witnesses, the participants. And the only
 9 date -- can you tell us the last line, where it refers
 10 to the date? Can you read it out?
 11 A. If I understand correctly, you mean the last -- or the
 12 last-but-one line: a copy of the minutes received, and
 13 here handwritten "8th May 2009", and the signature of
 14 Mr Stejar, and also his name is spelt out, Stejar, in
 15 handwriting.
 16 DR NACIMENTO: I have no further questions.
 17 THE CHAIRMAN: Thank you very much. We come to
 18 cross-examination, please.
 19 (9.54 am)
 20 Cross-examination by MR SMITH
 21 Q. Good morning. Mr Rakhimov, please put before you your
 22 first witness statement. Mr Rakhimov, we are going to
 23 hand you a binder as well of documents that we may refer
 24 to in the course of your examination, but I believe you
 25 have before you from your counsel your witness

Page 9

09:54 1 statements. They are also attached to your binder as
 2 well, so whichever you would like to refer to. I am
 3 referring to your first witness statement, paragraph 2.
 4 What I would like to confirm is that the letter from
 5 Moldovan President Voronin to President Nazarbayev
 6 served as the sole justification for the financial
 7 police's investigation of KPM and TNG; correct?
 8 A. I would like to explain.
 9 Q. Answer my question first, sir, and then you certainly
 10 can explain. But my question to you is a simple one.
 11 I would like for you to confirm that the sole
 12 justification for the financial police's investigation
 13 of KPM and TNG was the letter from President Voronin to
 14 President Nazarbayev; correct?
 15 A. I'm sorry, the only justification for what?
 16 Q. Your investigation, the investigation that the financial
 17 police conducted of KPM and TNG in the fall of 2008.
 18 The sole justification for that investigation was the
 19 letter from President Voronin to President Nazarbayev;
 20 correct?
 21 A. I can explain in the following way. The justification
 22 for bringing criminal charges was the fact that there
 23 were a sufficient number of indications collected at the
 24 preliminary stage of pre-investigation activity. If you
 25 wish to refer to this letter, this letter was the reason

Page 10

09:56 1 for carrying out pre-investigation inspections, and not
 2 for bringing criminal charges themselves.
 3 Q. Thank you. And just so the record is clear, my question
 4 to you was: the only reason that the financial police
 5 conducted an investigation or a pre-investigation of KPM
 6 and TNG was President Voronin's letter to
 7 President Nazarbayev; correct?
 8 A. I'm sorry, I think this question is incorrect. In the
 9 legal process, there is no concept under the Procedural
 10 Code, there is no concept of reason for the
 11 investigation. And then I can say that the
 12 initial/starting element was the letter from President
 13 Voronin, as it is stated in my indictment. Subsequently the
 14 investigation and charges
 15 were brought on the basis of the facts collected at the
 16 pre-investigation stages. So we were acting in strict
 17 compliance with the Criminal Procedure Code. And what I just
 18 referred to is provided by Article 177 of Criminal Procedure Code.
 19 Q. Sir, I'm not questioning that you were following
 20 directions. My question to you was the basis for those
 21 directions.
 22 But let's move on to the next question, which is:
 23 you do not know, do you, sir, whether President
 24 Nazarbayev instructed or requested President Voronin to
 25 send him the letter that served as the impetus for the
 investigation?
 A. I'm sorry, can you repeat the question? Who asked what?

Page 11

09:58 1 Q. Yes. My question to you is: you do not know whether
 2 President Nazarbayev requested President Voronin to send
 3 him the letter regarding Anatolie Stati; correct?
 4 A. I have no knowledge of this.
 5 Q. Okay. Your first witness statement again, at
 6 paragraph 2, the last sentence. You state:
 7 "In other words, pre-investigation and the then
 8 initiated criminal case against Kazpolmunay LLP were not
 9 pre-planned or premeditated."
 10 Do you see that? (Pause) Do you see that?
 11 A. Yes, I see this.
 12 Q. But in fact, sir, you don't know whether the
 13 investigation was pre-planned or premeditated by
 14 President Nazarbayev at all, do you, sir?
 15 A. Planning of investigation in a criminal case is carried
 16 out by the investigator.
 17 Q. But the investigator only commences the investigation in
 18 this case at the directive of the Prime Minister of
 19 Kazakhstan; correct?
 20 A. By no means so. The investigator, under Article 64 of
 21 the Criminal Procedural Code, is independent and takes
 22 all decisions on his own. No decisions by President or
 23 Prime Minister can affect his decisions.
 24 Q. Sir, you are not aware that the financial police
 25 commenced its pre-investigation as a result of an order

Page 12

<p>10:00 1 from the Prime Minister in response to</p> <p>2 President Nazarbayev's directive?</p> <p>3 A. I know only one thing: that the initial reason for</p> <p>4 investigation was the request by Mr Voronin which was</p> <p>5 registered in the book of incoming correspondence of the</p> <p>6 financial police. Based on it, a pre-investigation inspection was</p> <p>7 carried out, and its</p> <p>8 results were handed over to Investigation department for taking</p> <p>9 further procedural decisions.</p> <p>10 And I have no</p> <p>11 knowledge of any other decisions by the Government or Prime</p> <p>12 Minister</p> <p>13 Q. Okay. In paragraph 2 in your first witness statement</p> <p>14 you also state in the third sentence that:</p> <p>15 "[President] Voronin's application was subject for</p> <p>16 consideration and was considered in the same manner as</p> <p>17 any other application of any other citizen containing</p> <p>18 information on illegal activity on the territory of the</p> <p>19 Republic of Kazakhstan."</p> <p>20 So I want to be clear: it is your testimony,</p> <p>21 Mr Rakhimov, that the multi-agency investigation</p> <p>22 commenced in the fall of 2008 as to KPM and TNG would</p> <p>23 have been of the same scope and intensity whether the</p> <p>24 letter had come from President Voronin or from any</p> <p>25 citizen of Kazakhstan that had sent that letter to</p> <p>26 President Nazarbayev; is that correct?</p> <p>27 A. I'm sorry, I don't understand your question. I must</p> <p style="text-align: center;">Page 13</p>	<p>10:04 1 police were asked to investigate in response to</p> <p>2 President Voronin's letter?</p> <p>3 A. Let me explain that the investigator does not take part</p> <p>4 in the pre-investigation activities. But I can explain</p> <p>5 still.</p> <p>6 As far as I remember, the letter of Mr Voronin</p> <p>7 informed that Mr Stati obtained -- I'm speaking from my</p> <p>8 memory; I haven't got the document with me -- that</p> <p>9 Mr Stati received illegal income in the Republic of</p> <p>10 Kazakhstan and used these proceeds for -- or in some</p> <p>11 countries which are under UN sanctions or something like</p> <p>12 this.</p> <p>13 As an investigator, I did not look into this letter.</p> <p>14 I was dealing with the materials that were collected at</p> <p>15 the pre-investigative stage.</p> <p>16 Q. It's correct, is it not, sir, that the allegations</p> <p>17 contained in President Voronin's letter that served as</p> <p>18 the basis for the financial police's investigation were</p> <p>19 not looked into at all; they were never investigated?</p> <p>20 A. I'm sorry, I would like to correct you. It was not the</p> <p>21 reason for the action. We have a clear difference</p> <p>22 between -- in the Procedural Code between the facts</p> <p>23 leading to and reasons.</p> <p>24 I cannot agree that the letter was the reason for</p> <p>25 bringing a criminal case. The criminal case was brought</p> <p style="text-align: center;">Page 15</p>
<p>10:02 1 reconfirm -- are you asking me to confirm this</p> <p>2 paragraph, or the fact that there were many agencies</p> <p>3 involved in the investigation?</p> <p>4 Q. I thought the question was clear. Let me ask it again,</p> <p>5 sir.</p> <p>6 You state in your first witness statement at</p> <p>7 paragraph 2 that President Voronin's application to</p> <p>8 President Nazarbayev was considered in the same manner</p> <p>9 as the application of any other citizen would have been</p> <p>10 handled; is that correct?</p> <p>11 A. Yes, exactly.</p> <p>12 Q. So --</p> <p>13 A. The application of Mr Voronin was to be considered under</p> <p>14 a standard procedure, and if it contained some evidence</p> <p>15 or information about illegal activities, the law</p> <p>16 enforcement body was obliged to take subsequent action,</p> <p>17 no matter who sent in this message, be it an ordinary</p> <p>18 citizen or the President or be it a press report or information from a</p> <p>19 person who carries out operative search activities. All</p> <p>20 the same, the law enforcement body has to follow the</p> <p>21 same procedure.</p> <p>22 Q. Okay. And you indicate also in your statement, in that</p> <p>23 same sentence, that if an application is made containing</p> <p>24 information on illegal activity, then that serves as</p> <p>25 a proper basis for investigation.</p> <p>What is the illegal activity that the financial</p> <p style="text-align: center;">Page 14</p>	<p>10:06 1 as a result of the materials collected after application</p> <p>2 of Mr Voronin, which contained sufficient elements</p> <p>3 indicating the presence of a crime, and in compliance</p> <p>4 with Art. 185 of the Criminal Procedural Code, I had to take one of</p> <p>5 the three</p> <p>6 decisions with respect to these materials of</p> <p>7 pre-investigative inspections.</p> <p>8 Q. In your statement -- again, first witness statement,</p> <p>9 paragraph 2 -- you state:</p> <p>10 "In accordance with Article 183 of [the]</p> <p>11 Criminal-Procedural Code of [the Republic of Kazakhstan]</p> <p>12 the prosecuting agency is obliged to accept, register</p> <p>13 and consider application or information on any completed</p> <p>14 or imminent crime."</p> <p>15 My question to you, sir, is: what completed or</p> <p>16 imminent crime was being investigated by the financial</p> <p>17 police in response to President Voronin's letter?</p> <p>18 A. I can speak about the preliminary investigation, and</p> <p>19 this investigation was carried out in connection with</p> <p>20 the fact of illegal entrepreneurial activity.</p> <p>21 Q. Let's move on, Mr Rakhimov.</p> <p>22 You would agree with me, would you not -- and this</p> <p>23 is referenced in your second witness statement at</p> <p>24 paragraph 2.2, which is in front of you. But you would</p> <p>25 agree with me, would you not, that you had the</p> <p>discretion as to whether to initiate a criminal</p> <p style="text-align: center;">Page 16</p>

10:07 1 investigation based upon the pre-investigation materials

2 that you received? Correct?

3 A. Did you say 2.2?

4 Q. Yes.

5 A. Of my second testimony?

6 Q. My question, while you are reviewing that, sir, is

7 simply --

8 A. Just a second, sir. I would like to read this first.

9 (Pause) Yes, I am ready.

10 Q. My only question to you, sir, is: you would agree, would

11 you not, that you had the discretion, based upon the

12 pre-investigation inspection, as to whether or not to

13 initiate a criminal investigation?

14 A. It might be a problem with interpretation. Not based on

15 the results of the preliminary investigation, but based

16 on the results of the investigative search. These are

17 two different stages. Investigative search is the

18 second stage, and it's the investigators who decide

19 whether to initiate the case.

20 So the first stage is there was a complaint, and

21 there was a checkup or search by investigators, and I'm

22 not entitled to make any decisions there. And the

23 materials from this first stage will be given to the

24 investigators, who are to take a decision to deny

25 initiating investigation, to agree to initiate the

Page 17

10:11 1 translation of the answer and the next question.

2 MR SMITH: I apologise. I thought it was a simple question,

3 and I believe it is.

4 My question to you, sir, is simply: you had the

5 discretion as to whether or not to initiate a criminal

6 investigation of KPM, based upon the materials that you

7 received; correct?

8 A. Yes, I was the one to decide, based on the materials of

9 the pre-investigation.

10 Q. Thank you.

11 Now, you would agree with me, would you not, that at

12 the time that you made the decision to pursue a criminal

13 investigation, you had no qualifications to make

14 a determination as to whether KPM operated a main

15 pipeline; correct?

16 A. I was not qualified to decide, to determine?

17 Q. Okay, thank you. And in fact no one within the --

18 THE INTERPRETER: Sorry, sir, this was a question, not

19 an answer. The witness just asked you what you meant.

20 It was a question.

21 Q. I'm sorry. My question was: you were not qualified to

22 decide whether KPM operated a main pipeline; correct?

23 A. Well, I can answer that. I was not qualified to

24 determine whether it was a main pipeline or not.

25 Q. Thank you. Now --

Page 19

10:10 1 investigation, or to forward the materials based on the

2 scope of the case. And there is a fourth possibility,

3 since very recently: they may decide to start

4 a simplified court procedure.

5 So, having looked at the materials in 2008, the

6 investigator had three options: either to initiate

7 a case, to deny to initiate the case, or to forward the

8 materials based on the particular specialty of this

9 case. If the case is initiated, then they start

10 a preliminary investigation, and it's the investigators

11 who make decisions.

12 Based on these preliminary investigations, there are

13 several options: they may decide to forward it to the

14 court; they may decide to stop investigations; or the

15 third option is to forward it according to the

16 territorial or to the material type of the case to

17 another body or, for example, to another state, if it's

18 a foreign state that should be dealing with it. Or if

19 the person disappeared, the procedure could be

20 stopped --

21 MR SMITH: Mr Chairman, I think the witness is

22 filibustering. I would like an answer to my question.

23 THE CHAIRMAN: He hadn't finished.

24 MR SMITH: I apologise.

25 THE CHAIRMAN: We have to make a pause between the

Page 18

10:13 1 A. But I had the authority -- since you are speaking about

2 authority, I had the authority to decide whether to

3 initiate or to decide to initiate a criminal case based

4 on the suspicions that a criminal activity had been

5 committed. And this is not the same as to accuse --

6 this is not the same as to put accusations.

7 Q. Okay. So your decision to initiate a criminal

8 investigation was based on your suspicions that KPM

9 operated a main pipeline; is that your testimony?

10 A. Absolutely correct.

11 Q. Let's look at the resolution that you entered initiating

12 that criminal investigation. It's behind tab 14, sir,

13 in your binder. It's C-632 in the record. You will see

14 the Russian behind the English.

15 Sir, this is a 15th December 2008 resolution on the

16 initiation and acceptance of the criminal case, and it

17 is signed by you; correct?

18 A. Correct.

19 Q. You would agree with me, would you not, that nowhere in

20 that resolution on your decision to initiate and accept

21 a criminal case is there any suggestion or statement

22 that KPM operates a main pipeline; correct? And if it's

23 not correct, could you direct the Tribunal to where in

24 your resolution there is any suggestion or statement

25 that KPM operates a main pipeline.

Page 20

10:16 1 A. You are right.

2 Q. Now, in your second witness statement you state that you
3 passed this resolution to open a criminal investigation
4 because you had concluded there was "sufficient
5 evidence" indicating that a crime had been committed; is
6 that correct?
7 A. Could you please refer me to a particular paragraph?
8 Q. Yes, paragraph 2.2 of your second witness statement, in
9 the second sentence. It states that you:

10 "... concluded that there was sufficient evidence
11 indicating that a crime had been committed."
12 Correct?
13 A. What I'm saying is that there is sufficient data
14 indicating that, but I'm not speaking about sufficient
15 evidence. So if there is sufficient data, then the
16 decision is made to initiate a criminal investigation, and if there is
17 sufficient evidence, then accusations may be brought,
18 and this is based on Articles 209 and 177 of the
19 Criminal Code.
20 Q. But in fact none of that data or evidence -- the English
21 translation we have is "evidence", but I'll accept your
22 amendment that it is "sufficient data" -- is referenced
23 in your resolution opening the investigation; correct?
24 (Pause)
25 THE INTERPRETER: The witness hasn't yet heard the question,
sir. I beg your pardon.

Page 21

10:18 1 MR SMITH: Has there been an answer to the question?

2 THE INTERPRETER: Sorry, sir, I had a problem with the
3 transcript. So I don't have the last lines of the
4 transcript in front of me.
5 THE CHAIRMAN: Well, you can't have the transcript because
6 we are still waiting for the English translation of what
7 was said in Russian by the witness.
8 THE INTERPRETER: The last sentence the witness said was
9 translated, and after that the last question followed.
10 MR SMITH: Chairman, I can repeat the question.
11 THE CHAIRMAN: Go ahead.
12 MR SMITH: My question to you, sir, is: you state in your
13 second witness statement that based upon the
14 pre-investigation inspection materials you concluded
15 that there was sufficient data indicating that a crime
16 had been committed, and that led you to pass the
17 resolution which is before you as C-632. And my
18 question to you simply is: none of that data or evidence
19 that supported your decision to initiate a criminal
20 investigation is contained in your resolution; correct?
21 A. I'm afraid I did not understand the question. What
22 I write here is based on the analysis of the collected
23 data, material of the inspection. And due to the
24 sufficient data indicating the presence of a crime,
25 I rendered a resolution on 15th December.

Page 22

10:20 1 So my answer is: I refer to the Code of Criminal
2 Procedure, which says that a criminal case will be
3 initiated in case there is sufficient data indicating
4 the presence of a crime, and in absence of circumstances
5 excluding the possibility to pursue someone in
6 a criminal matter.
7 So these were the reasons why I initiated criminal
8 investigation. There were no such exceptional
9 Circumstances in the materials of pre-investigation inspection that
10 would exclude the possibility to pursue someone in a criminal
11 matter, so I was not in a position to actually
12 deny or to actually abstain from initiating criminal
13 investigation, based on the materials available to me.
14 I made these conclusions based on what was available to
15 me and based on my internal, my personal convictions.
16 Q. What evidence did you have at the time that you made the
17 decision to commence a criminal investigation that KPM
18 operated a main pipeline?
19 A. Well, first of all, the materials that came to me, they
20 reached me sometime in early December, and I made this
21 decision on 15th December. I had studied the materials,
22 I was critical in respect of some of the issues;
23 however --
24 Q. Mr Chairman, I believe, given the press of time, we need
25 answers to the questions that have been asked. I asked
a very simple question: what was his evidence that he
relied upon to conclude that KPM was operating a main

Page 23

10:21 1 pipeline? He is not answering that question.

2 DR NACIMIENTO: He started to answer it.
3 THE CHAIRMAN: I think the witness was not answering the
4 question. But you have heard it again, so perhaps you
5 try to say what evidence you had at that time.
6 A. Alright. More specifically, the materials of the
7 preliminary investigation contained letters of
8 Mr Cornegruta and Mr Cojin directed to the Ministry of
9 Energy and [Mineral] Resources where they tried to, in
10 the form of application to reissue the licence,
11 attempted to obtain a separate licence, a special
12 licence for new kind of activities, activities that are
13 to be licensed. This is the first thing.
14 Second, the case materials, the investigation
15 materials contained letters directed to the Agency for
16 Natural Monopolies, where the same people tried, in the
17 form of application to reissue a licence, [to obtain]
18 the right to perform activities which are supposed to be
19 licensed in particular.
20 Third, there was also materials from the geologic
21 committee where Kazpolmunay -- where it was stated that
22 this company did not have the licence to use main
23 pipelines, and there must be a reason why it was stated
24 there, that there was no such licence.
25 Fourth, there were letters from the licensing

Page 24

<p>10:23 1 authorities, Ministry of Energy and Mineral Resources and Agency for Regulation of Natural Monopolies -- where it was stated that</p> <p>2 these legal entities did not have special licence to use</p> <p>3 main pipelines.</p> <p>4 Fifth, there were results of an expert review based</p> <p>5 on a similar pipeline where the conclusions were that</p> <p>6 such pipeline was a main pipeline, which was indirect</p> <p>7 [indication] of illegal activity. And I also myself</p> <p>8 studied the normative documents concerning licensing for</p> <p>9 this kind of activity.</p> <p>10 Sixth, I studied the design documentation, where</p> <p>11 I could see that they did have such a pipeline, without</p> <p>12 qualifying this pipeline in a particular manner.</p> <p>13 So I concluded that there were no reasons to refuse</p> <p>14 initiating criminal [investigation]. At the same time</p> <p>15 I concluded that there were no reasons to initiate</p> <p>16 criminal investigation in respect of a particular</p> <p>17 person. We needed to figure it out in preliminary investigation. And this is how I came to my decision.</p> <p>18 Q. Thank you, sir. I appreciate that. Now let me just ask</p> <p>19 you a few questions about what you said.</p> <p>20 First, the notation that you note that the geology</p> <p>21 committee determined that KPM did not have a main</p> <p>22 pipeline licence, that notation included in the geology</p> <p>23 committee report was made as a result of a request by</p> <p>24 the financial police; correct?</p> <p>25 A. This is the first time I hear of it from you. I had</p> <p style="text-align: center;">Page 25</p>	<p>10:26 1 inspection; correct?</p> <p>2 A. What kind of instruction?</p> <p>3 Q. My question to you is: you are aware, are you not, that</p> <p>4 there is no witness from the financial police that has</p> <p>5 denied that an instruction was given to the geology</p> <p>6 committee to include the language in the inspection</p> <p>7 report that KPM did not possess a main pipeline licence;</p> <p>8 correct?</p> <p>9 A. Well, my answer to this is there are witnesses, all the</p> <p>10 people who participated in the inspection, people from</p> <p>11 the geological committee and financial</p> <p>12 inspection, the people who actually experienced the --</p> <p>13 sorry, not tax commission; geology commission. But</p> <p>14 I can only assume that these people may answer this.</p> <p>15 Q. Okay. The next question I have is: you stated that one</p> <p>16 of the items of evidence that you considered was that</p> <p>17 the Agency for the Regulation of Natural Monopolies had</p> <p>18 confirmed that KPM did not possess a main pipeline</p> <p>19 licence; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. But you are aware also, are you not, sir, that a witness</p> <p>22 in this proceeding from the Agency for the Regulation of</p> <p>23 Natural Monopolies has indicated that his agency is not</p> <p>24 qualified and is not competent to make a determination,</p> <p>25 as the licensing agency, as to whether KPM was required</p> <p style="text-align: center;">Page 27</p>
<p>10:25 1 a protocol from the geological committee. And should</p> <p>2 there be any pressure used, why didn't the person who</p> <p>3 signed this document make a note of that or refer to the</p> <p>4 financial police request, or something like that?</p> <p>5 I can't state anything to this effect.</p> <p>6 Q. You've been sitting in this hearing room throughout this</p> <p>7 hearing; correct?</p> <p>8 A. Yes. At times I would leave the room, but yes.</p> <p>9 Q. You heard Mr Cojin --</p> <p>10 THE CHAIRMAN: You are a bit fast.</p> <p>11 MR SMITH: Yes, I apologise.</p> <p>12 Sir, this is not the first time you have heard that</p> <p>13 the financial police instructed the geology committee to</p> <p>14 include the notation that KPM did not possess a main</p> <p>15 pipeline licence because you were sitting in this</p> <p>16 room -- assuming this is the first time you heard it --</p> <p>17 when Mr Cojin specifically testified that that was the</p> <p>18 case; correct?</p> <p>19 A. Yes, you are right. I have to correct myself. This is</p> <p>20 the first time I am posed with this question, and</p> <p>21 I can't answer it.</p> <p>22 Q. And you are also aware, are you not, that no one from</p> <p>23 the financial police, in connection with this</p> <p>24 proceeding, has submitted any evidence that in fact that</p> <p>25 instruction was not given that was present at that</p> <p style="text-align: center;">Page 26</p>	<p>10:28 1 to apply for a main pipeline licence? You know that, do</p> <p>2 you not, sir?</p> <p>3 A. Well, from his testimony I know that the application</p> <p>4 for such licence is made by presentation.</p> <p>5 Q. My question to you is a different one, sir.</p> <p>6 You cited the observation by the Agency for the</p> <p>7 Regulation of Natural Monopolies that KPM did not</p> <p>8 possess a main pipeline licence as being one of the</p> <p>9 items of evidence that you considered in initiating</p> <p>10 a criminal investigation. And my question to you simply</p> <p>11 is: you know, sir, do you not, that that agency has</p> <p>12 provided evidence in this proceeding that it is not</p> <p>13 competent to make a determination as to whether</p> <p>14 a pipeline operator is required to apply for a main</p> <p>15 pipeline licence? You know that, do you not?</p> <p>16 A. I did not study the testimonies of the Agency for</p> <p>17 Natural Monopolies but I did interview the employees of</p> <p>18 this agency. And if you want, I can check and see what</p> <p>19 they said in [response] regarding these issues in the</p> <p>20 interviews I conducted, if we have the time.</p> <p>21 Q. That's a fair answer.</p> <p>22 Let's move to the next item of evidence that you</p> <p>23 cited. You say that there was an expert review done</p> <p>24 that concluded that either KPM or TNG -- I don't recall</p> <p>25 your testimony -- operated a main pipeline licence.</p> <p style="text-align: center;">Page 28</p>

10:30 1 That's news to us today.

2 What expert review had been done of that issue as
3 part of the pre-investigation?

4 A. In this case? All in all, I can tell you, based on
5 criminal -- there were approximately nine expert reviews
6 in cases of TNG and KPM; three economic [expert
7 reviews], as far as I remember, among them.

8 When it comes to qualification of a pipeline as
9 a main pipeline, it was a construction and technical
10 expert review that was conducted that resulted in such
11 conclusions.

12 Q. Okay. I want to be very specific here, sir. Now we are
13 talking about the period prior to 15th December 2008, so
14 prior to the time you made the decision to initiate
15 a criminal investigation.

16 Your testimony was: one of the items of evidence
17 that you considered was an expert review that had made
18 a determination that the companies operated a main
19 pipeline. I will state to you -- and if counsel
20 challenges this, we can talk about it -- that no such
21 document has ever been produced in this case by the
22 respondent.

23 So my question to you is: what specific expert
24 review had been done of the issue prior to the date on
25 which you decided to commence the criminal

Page 29

10:32 1 investigation?

2 A. Yes, you are right. By 15th December there had been no
3 such expert review with regard to KPM. But there was an expert
4 review concerning the condensate pipeline of TNG.

5 Q. Okay. We've not seen that either from the respondent.
6 So my question to you is: who conducted that expert
7 review?

8 A. It was the Centre for Judicial Expert Reviews of the
9 Ministry of Justice. But you are right, this had
10 nothing to do with KPMs pipeline.

11 Q. I understand. I want to talk about TNG's pipeline now.
12 So a forensic expert report had been done on TNG's
13 pipeline by the Ministry of Justice that was included in
14 the file that you reviewed prior to December 15th 2008,
15 and prior to the commencement of any criminal
16 investigation of TNG; is that your testimony?

17 A. No. Let me clarify.
18 The materials of preliminary investigations which
19 were given to me had the results of a forensic expert
20 review concerning the condensate pipeline of TNG. I took into
21 consideration that forensic expert review which related to TNG.
22 TNG had three or more pipelines, while KPM had only one
23 pipeline. So I recall that it was a TNG pipeline.
24 As for the KPM pipeline, it was me, during the
25 investigation, who instructed to conduct such a forensic
expert review.

Page 30

10:34 1 Q. Do you know why that forensic expert review of TNG's

2 pipeline by the Ministry of Justice that apparently
3 occurred prior to 15th December 2008, do you know why
4 that's not been produced by respondent in this
5 proceeding?

6 A. I cannot know that. It could be that such forensic
7 expert review results were used in another process. It
8 was a different case, a criminal case against TNG.
9 There were separate criminal cases: one against KPM, and
10 then at a later stage due to illegal entrepreneurial
11 activities of TNG, and that was a separate criminal
12 case.

13 Q. Okay. Let's move to the next item of evidence that you
14 considered. You say you studied yourself the normative
15 documents on whether or not KPM operated a main
16 pipeline. You are referring to technical specifications
17 for pipelines' design; is that correct?

18 A. When I speak about "normative acts", normative acts,
19 according to our legislation, are the constitution, the
20 codes, the resolutions of the President and other
21 similar documents. So technical specifications and the
22 like are not such normative acts. So I studied the
23 legislation on licensing, older legislation on licensing
24 and current legislation on licensing.

25 Q. But none of that legislation on licensing defines

Page 31

10:36 1 whether a pipeline is or is not a main pipeline;

2 correct?

3 A. Shall I explain why I studied this legislation?

4 Q. No, I really would like an answer to my question.
5 I would just like a confirmation that none of the
6 normative acts that you've testified you studied contain
7 a definition of what is or what is not a main pipeline;
8 correct?

9 A. As I understand, the legislation on subsoil and subsoil
10 use and the Law on Oil.

11 Q. You understand that those items of legislation do define
12 a main pipeline?

13 A. At least these laws contain the concept of a main
14 pipeline.
15 I didn't find other concepts of pipelines -- neither technological,
16 nor field - in these laws.

17 Q. Okay. Let's look, if you would, at tab 2 in your
18 binder. It's Exhibit C-90 in the record. This is
19 a letter dated 19th November 2008, so prior to
20 15th December 2008, when you decided to commence
a criminal investigation. It's from the Ministry of
21 Emergency Situations, and in particular the Department
22 of Emergency Situations of Mangystau oblast, to
23 Mr Cornegruta, from the head of the department.
24 Do you see that?

25 A. Yes, exactly so.

Page 32

10:38 1 Q. You've seen this document before today; correct?

2 A. Yes, I've seen this document before.

3 Q. You understand that in claimant's Exhibit C-90, in
4 response to a request by KPM as to whether or not its
5 pipeline -- the pipeline at issue in the criminal
6 proceeding -- was a main pipeline, the Ministry of
7 Emergency Situations of Kazakhstan, citing Article 124
8 of the Law on Oil, reached the conclusion that:
9 "... all pipelines operated by your enterprise, from
10 the place of extraction to the point of transferring the
11 hydrocarbons to the oil and gas main pipelines, are not
12 main pipelines."
13 You understood that at the time you made the
14 decision to commence the criminal investigation;
15 correct?

16 A. Well, first of all, in taking a decision to initiate
17 a criminal case, I was not given this document. This
18 document was presented by Mr Cornegruta after the
19 criminal case had been initiated.
20 Secondly, it's not a document from the Ministry of
21 Emergencies.

22 Q. Who is the document from?

23 A. This is a document of the Department for Emergency
24 Situations of the Mangystau region.

25 Q. But you are disputing that that department is under the

Page 33

10:40 1 auspices or under the jurisdiction of the Ministry of

2 Emergency Situations of the country; is that correct?

3 A. No, I am not disputing this. I can even confirm that
4 this department is directly subordinated to the Ministry
5 of Emergency Situations. But these are two separate
6 legal persons.

7 Q. Look, if you would, at tab 12 in your binder (C-469).
8 I'll ask you a question; we may need to refer to the
9 document if necessary. Both tabs 11 and 12 we'll be
10 talking about if necessary.
11 But you understand, do you not, that the Ministry of
12 Emergency Situations had a representative involved in
13 and on a working group committee in connection with the
14 design of the KPM pipeline at issue in the criminal
15 proceeding; correct?

16 A. The Ministry for Emergency Situations had no right to
17 participate in the design work of a pipeline, as far as
18 I know, because it is not a design organisation.

19 Q. Okay. Answer my question. You understand or
20 understood, did you not, that a representative of the
21 Ministry of Emergency Situations was in fact on the
22 working committee engaged in connection with the design
23 of the KPM pipeline at issue; correct?

24 If you look at tab 12, the act of the working
25 committee that led to the acceptance of the pipeline

Page 34

10:42 1 included the head of the industry department,

2 Mr Bisenov?

3 A . I can't see this representative in the working
4 committee. Are we talking about document C-469?

5 Q Yes, C-469. If you look at the list of the working
6 committee members, do you see "State" --

7 A Sorry, can you give me the name of this person?

8 Q Well, it's B-I-S-E-N-O-V, "State inspection for
9 emergency situations". It's in the list on the first
10 page.

11 A . I am looking at the first page, not at the signature
12 list. We are looking at the composition of the
13 commission, right? So we have here -- so far I haven't
14 found a representative of the Ministry for Emergencies.

15 Q Okay. Well, if you look midway down the first page, do
16 you not see Mr Bisenov?

17 A Can you please show me?

18 Q And in fact he also signs the document; correct?

19 A Yes, that's right.

20 Q You also know that the pipeline company that was
21 responsible for or involved in the design of the KPM
22 pipeline at issue, NIPI Neftegaz, also reached the
23 conclusion, in response to an enquiry from KPM, that KPM
24 did not operate a main pipeline? You know that as well,
25 do you not, sir?

Page 35

10:45 1 A I can't say anything from my memory. Can you show me

2 the respective document, please?

3 Q Yes. Please look at tab 5, Exhibit C-101.

4 A . Can I close the previous document?

5 Q Sure.

6 A Yes.

7 Q . Do you know what NIPI Neftegaz is?

8 A . I know what NIPI Neftegaz is.

9 Q Okay. And the design institute of NIPI Neftegaz is in
10 fact an expert in Kazakhstan in the design of oil and
11 gas pipelines; correct?

12 A Yes. One of the many experts in design of industrial
13 facilities, one out of many.

14 Q . And you understand, and you learned in the course of
15 your investigation, that in designing the KPM pipeline
16 segment that ultimately was the subject of the criminal
17 investigation, NIPI Neftegaz used design criteria for
18 in-field pipelines; correct?

19 A . I can't agree with you on this issue. I am not
20 a designer or a construction engineer. But speaking
21 from my personal experience, I can say that all the
22 industrial facilities, especially of this class of
23 potential hazard, must be based on obligatory design
24 solutions which undergo a certain procedure. I cannot
25 say how they should be qualified; they may be in-field

Page 36

10:47 1 or something else. But I'm not an expert in these

2 matters.

3 Q. Right. Okay. You know, do you not, sir, that by letter

4 dated January 9th 2009 to KPM from NIPI Neftegaz and

5 their design institute, that design institute concluded

6 that the proper classification of the KPM pipeline at

7 issue is a classification of in-field pipeline, and not

8 a classification of main pipeline?

9 A. Yes, I've read this letter.

10 Q. And you agree you have no expertise to make a contrary

11 determination as to what is or is not properly designed

12 as a main pipeline or an in-field pipeline; correct?

13 A. Sorry, what have I to agree to? Please give me the

14 position that I have to accept.

15 Q. What I'm asking you to accept -- I believe perhaps you

16 have already -- is that unlike NIPI Neftegaz, who made

17 the conclusion that this pipeline was properly designed

18 as an in-field pipeline and not a main pipeline, you

19 have no qualifications to dispute that determination;

20 correct?

21 A. I am not disputing this proposition. If I see this

22 letter, Mr Gershtanskiy makes the conclusion that the

23 pipelines for transportation to the treatment plant:

24 "... as well as pipelines transporting marketable

25 oil ... are classified as in-field ... of respective

Page 37

10:51 1 national oil company, KazMunaiGas; correct?

2 A. As far as I remember, I spoke to Mr Dorofeev, and we

3 have at the hearing two names of different entities:

4 national company KazMunaiGas-Kazakh Institute for Oil and Gas,

5 and separately Kazakh

6 Scientific Research and Design Institute for Oil and Gas. I can't

7 confirm or deny what you are saying.

8 Q. Look, if you would, at tab 13 as well. You know, do you

9 not, sir, that before you made the decision to initiate

10 a criminal investigation, your department had requested

11 the opinion of the national oil company, KazMunaiGas, as

12 to whether KPM operated a main pipeline; correct?

13 A. As far as I know, in the case material -- either in the

14 material of the case or me personally has never

15 initiated any request to KazMunaiGas.

16 Can I have a look at this letter which is referenced

17 here?

18 Q. Please do. It's C-604, behind tab 13. And while you

19 are reading, for the record, it states in its opening

20 sentence:

21 "Having examined letter No. 6-22/10723 of

22 5 December 2008 of the Agency on Fighting with Economic

23 and Corruption Crimes of the Republic of Kazakhstan

24 (Financial Police), we inform you about the

25 following:..."

Page 39

10:49 1 types and categories, depending on the features and

2 parameters ..."

3 That's all that I can read here.

4 Q. Okay, thank you.

5 Next, you are also aware, and learned during the

6 course of your criminal investigation, that the national

7 oil company, KazMunaiGas, and its design institute

8 similarly reached the conclusion that the KPM pipeline

9 segment at issue in the criminal prosecution was not

10 a main pipeline? And if you look at tab 4 to refresh

11 your recollection. It's C-99.

12 Do you recall this letter?

13 A. Yes, I recall it now.

14 Q. And the general director of the national oil company's

15 design institute concluded specifically that the

16 pipeline at issue in your criminal prosecution:

17 "... do[es] not belong to the category of main

18 pipelines ... "

19 Correct?

20 A. I can't say whether the Kazakh institute is part of the

21 national company. I can't say anything about this.

22 Q. Look at the Russian --

23 A. But the content of the letter I do remember.

24 Q. But if you look at the letter in Russian, it in fact

25 identifies the design institute as being part of the

Page 38

10:53 1 correct?

2 A. May I read this?

3 Q. Sure, certainly. (Pause)

4 A. Yes, I've familiarised myself with this letter.

5 Q. In the concluding paragraph, after some discussion of

6 the legislative regime, ultimately the national oil

7 company states:

8 "Given the aforementioned, we consider that to solve

9 this issue it is necessary to address the competent

10 bodies ... "

11 And specifically it identifies the Ministry for

12 Emergency Situation as a competent body within the

13 Republic of Kazakhstan to make a determination of

14 whether KPM operates a main pipeline; correct?

15 A. Or appoint "appropriate expert examination", as it says.

16 Q. Right. But my question to you is: the national oil

17 company also very clearly identifies the Ministry for

18 Emergency Situation as being competent to make

19 a determination as to whether or not a company operates

20 a main pipeline; correct?

21 A. Can you please explain the essence of this question?

22 Yes, I've read this letter. I haven't seen it before;

23 this is the first time I see it. What do you expect me

24 to reply?

25 Q. Well, I'd like an answer. There's no essence to the

Page 40

10:56 1 question. The question is pretty straightforward.

2 The financial police solicited the views of the
3 national oil company as to whether KPM operated a main
4 pipeline, and the national oil company in response said,
5 "We suggest that you address that question to
6 a competent body." And the competent body that they
7 identified was the Ministry of Emergency Situations;
8 correct?

9 A. No, it's not correct. The financial police never
10 requested any such explanations from the national oil
11 company. As you see, KazMunaiGas is answering to Deputy
12 Minister of Energy and Mineral Resources, Mr. Turganov, after they
13 reviewed our letter. So please show me the letter to
14 which we have the reply here, and let's see whom we
15 addressed on 5th December 2008.

16 This opinion of Mr Berlibayev is not known to me,
17 and he proposes here to turn to the Committee for State Control of
18 the Ministry for
19 Emergency Situation, but not the department for Emergency
20 Situations of
21 Mangystau region.

22 This is the first time I see this letter.

23 Q. Well, I appreciate it may be the first time you've seen
24 the letter. Are you denying, sir, that the financial
25 police in fact made enquiry of KazMunaiGas that's
identified as letter no. 6-22/10723 of 5th December?

A. I'm not denying that there might be such a letter, but

Page 41

10:58 1 I don't remember that me personally, or at least in the

2 materials of the case that I was investigating with
3 respect to KPM and TNG there should be a letter
4 addressed to KazMunaiGas. KazMunaiGas is not
5 a competent body to determine such matters. This is my
6 personal opinion.

7 Q. They're not competent, notwithstanding the fact that the
8 financial police, for whom you work, asked them
9 specifically to render such a view; correct?

10 A. We are not asking them. In this case Mr Berlibayev
11 would write to the financial police and not to the
12 Deputy Minister of Energy and Mineral Resources. You
13 see here that the letter is addressed to the Ministry of
14 Energy and Mineral Resources. So either they confused
15 the addressee or they confused the content of the
16 Letter, I mean Mr. Berlibayev.

17 Q. Let's look at tab 6, which is Exhibit C-103. This is
18 a letter dated 8th January 2009 from the Ministry of
19 Emergency Situations, and in particular its National
20 Scientific and Research Centre on Industrial Safety
21 Issues, entitled "CONCLUSION of the expert review to
22 determine the appurtenance of pipelines from
23 <<Kazpolmunay>> LLP objects to main or field pipelines".
24 Do you see that?

25 A. We are speaking about C-103, [aren't] we?

Page 42

11:00 1 Q. Yes, sir.

2 A. "CONCLUSION", Centre for Technical Safety -- Research
3 Centre on Industrial Safety Issues. Yes, I see.

4 Q. And you are familiar with this letter, right? Because
5 you in fact excluded this, among other letters of
6 opinion that my clients did not operate a main pipeline,
7 as part of your criminal investigation; correct?

8 A. This was submitted among other things to me so that
9 I could join them to the case materials.

10 Q. Okay. And you understand, do you not, that in its
11 rather lengthy letter that's somewhat technical dated
12 8th January 2009, on the last page, the Ministry of
13 Emergency Situations -- there are three signatories --
14 concludes:
15 "According to the expert review results, the [KPM]
16 ... pipeline ... "
17 And it's the one at issue in the criminal
18 proceeding:
19 "... is a field pipeline."
20 Do you see that?

21 A. Yes, I do see this last page of the document. But
22 I cannot agree that these persons work for the Ministry
23 of Emergencies.

24 Q. Why can you not agree that? Isn't it on the letterhead
25 of the Ministry for Emergency Situations?

Page 43

11:02 1 A. Well, you do see this in the letterhead, "Ministry of

2 Emergency Situations". But this ministry has
3 a subsidiary, which is National Scientific and Research
4 Centre, and this research centre has its own state
5 company, Scientific Research Centre on Technical Safety
6 in Oil and Gas, which is situated in the City of Atyrau.
7 So it's very hard to say that the people who signed this
8 letter are employees of the ministry.

9 Q. Okay. We'll take that answer and move on.
10 Now, when you received from KPMs management --
11 let's talk first about the letters from the Ministry of
12 Emergency Situations. You know, we've looked right at
13 two of those that concluded that my client did not
14 operate a main pipeline. You sent a letter directing
15 that those letters be -- or their initial letter be
16 withdrawn; correct?

17 We are looking at tab 3. This is C-92 in the
18 record. When I say "you", I apologise, sir, I'm
19 referring to the financial police.

20 You recall, do you not, that the financial police
21 instructed the Ministry of Emergency Situations to
22 withdraw its letter, which is behind tab 2 at C-90,
23 opining that KPM did not operate a main pipeline;
24 correct? (Pause)

25 A. Yes, I am ready.

Page 44

11:05 1 Q. My question to you is: the financial police directed the
2 Ministry of Emergency Situations to withdraw its opinion
3 that KPM did not operate a main pipeline, and
4 specifically the opinion at C-90 behind tab 2?
5 A. Yes, probably this is a document mentioned in the
6 letter. However, I do not see that the Agency of the
7 Financial Police gives any instructions. The agency is
8 not entitled to instruct the Ministry of Emergencies.
9 Instructions means that they demanded something be done,
10 they put their own, enforced their own will. This would
11 not be correct.
12 I am just reading the last paragraph of the document
13 under the third tab, and I am quoting this last
14 paragraph:
15 "Considering the fact that the aforementioned
16 explanations of Colonel Hairusev ... indirectly
17 influence the verification performed ... under ... I am
18 requesting that you revoke the letters ..."
19 This is a request; this is not an instruction.
20 Q. Okay. So this is the financial police, who have been
21 directed to investigate my clients' activities by
22 President Nazarbayev, requesting that the Ministry of
23 Emergency Situations revoke a letter; correct?
24 A. Yes, based on the text of this letter. Yes.
25 Q. Okay. You also know, do you not, that in the course of
Page 45

11:07 1 the financial police's investigation it asked the
2 Ministry for Energy and Natural Resources its opinion on
3 whether KPM operated a main pipeline; correct? If you
4 look at tab [18].
5 A. Yes, there was such a letter.
6 Q. Okay. And at tab 18, which is C-718, as you will see,
7 there are a number of different pipelines operated both
8 by TNG and KPM identified in this January 5th 2009
9 letter, but the one that is identified at paragraph 2.1,
10 which on the English is the next-to-last page of the
11 letter, you would agree with me, would you not, that is
12 the KPM pipeline that was the subject of the criminal
13 prosecution? Is that correct?
14 A. Yes.
15 Q. Okay. And then --
16 A. Criminal investigation accusing Mr Cornegruta.
17 Q. Fine. And the letter which you authored, it appears --
18 is that correct? You authored this letter, right?
19 A. Yes, I am the executor of this letter. You can see it
20 here.
21 Q. Yes. And you state near the conclusion:
22 "In this respect I ask you to provide additional
23 clarifications whether the following pipelines are
24 classified as trunk pipelines ... "
25 And you would agree with me that the sixth pipeline
Page 46

11:09 1 that is enumerated is the KPM pipeline that was the
2 subject of Mr Cornegruta's criminal prosecution;
3 correct? (Pause) Is that correct?
4 A. Yes, I am reading it.
5 Q. In fact the Ministry of Energy and Natural Resources
6 responded to the financial police's enquiry on
7 February 4th 2009 and concluded that KPM did not operate
8 a main pipeline; correct?
9 A. Could I see this letter, please?
10 Q. Yes. It's tab 15 --
11 A. Because I don't recall.
12 Q. C-719. Tab 15, claimant's Exhibit C-719.
13 You would agree with me, would you not, that on
14 4th February 2009, in response to the financial police's
15 letter as to the oil pipeline that was at issue in
16 Mr Cornegruta's criminal proceeding, the Ministry of
17 Energy and Natural Resources, in particular the
18 executive secretary Mr Batalov, stated:
19 "Considering the above, the above-named pipelines
20 belong to pipelines working as a gathering manifold."
21 Do you see that?
22 A. I will partly agree with you, because he refers to "the
23 above-mentioned pipelines". And the above-mentioned
24 pipelines, let's see which ones. These are not only
25 Kazpolmunay pipelines, but also TNG. But below, they
Page 47

11:12 1 say that TNG is using two or more -- two main pipelines,
2 don't they?
3 So if you read the entire document, you can see --
4 and this is my understanding -- that this letter signed
5 by Mr Batalov says that there are several pipelines out
6 of the six pipelines listed in the request. So there
7 are some of them belonging to TNG and some of them
8 belonging to KPM. So there are some of them which are
9 not main pipelines but are gathering manifold pipelines.
10 However, as earlier specified, the gas pipeline,
11 based on technical specifications, is considered to be
12 a main pipeline. So this is something you can see in
13 this letter as well. So we are not speaking about one
14 KPM pipeline.
15 Q. Yes, I appreciate that, sir. But the KPM pipeline that
16 was the subject of Mr Cornegruta's criminal
17 investigation, which is clearly identified in the fifth
18 paragraph of Executive Secretary Batalov's letter, it's
19 identified as "oil pipeline OTF-OSF". That's the
20 pipeline that he --
21 A. (Not interpreted) Da.
22 Q. Correct?
23 A. Yes, I agree.
24 Q. And it is as to that pipeline that the Ministry of
25 Energy and Natural Resources concluded that that
Page 48

11:14 1 pipeline was working as a gathering manifold; correct?

2 A. Absolutely correct.

3 Q. And then, just as you had done with the Ministry of

4 Emergency Situations, you asked that this letter be

5 withdrawn; correct? That's in your third witness

6 statement at paragraph 3.4.

7 A. No, I did not ask the Ministry of Oil and Gas or

8 Ministry of Energy and Mineral Resources to withdraw

9 this letter; I never said so. Could you please show in

10 my witness statement where I said it?

11 Q. Look at paragraph 3.4. And I take your modification of

12 my question. You called the author of the letter,

13 Mr Ibararov, who wrote the letter for the executive

14 secretary, and quizzed him as to what technical and

15 project documentation he had used. And then he told you

16 that he would talk to his superior, right?

17 A. I couldn't call Mr Batalov. I probably called

18 Mr Ibararov, who was the executor of this letter. In

19 item 3.4, this is what I am saying:

20 "Therefore, shortly after I received ... I called

21 the person who wrote the letter, Mr Ibararov ..."

22 I never called Mr Batalov.

23 Q. Right, and I think that's what I said. But, if not,

24 I take the revision to my question. But my question is:

25 you received this letter which indicated the opinion of

Page 49

11:16 1 the Ministry of Energy and Mineral Resources that the

2 KPM pipeline segment that was at issue in the criminal

3 investigation was not a main pipeline, and you quizzed

4 him as to what technical and project documentation he

5 had used, and I assume somewhat sheepishly he said he

6 would have to discuss that with his superior?

7 A. That's correct.

8 Q. And then lo and behold, as we say in the south, the

9 minister withdrew his letter, did he not?

10 A. That's right, they did withdraw.

11 Q. In fact they withdrew two letters, did they not? If you

12 look behind your third witness statement, you produced

13 some new exhibits to your third witness statement.

14 A. That's right.

15 Q. And the first exhibit is a registry card indicating that

16 the Ministry of Energy and Natural Resources had

17 withdrawn both its 4th February 2009 letter, but also

18 a 30th December 2008 letter. Do you recall that?

19 A. Yes, I can see in the document this very fact: that the

20 Ministry of Energy withdraws two letters, and the Agency

21 of Financial Police, the department, executes this

22 withdrawal accordingly.

23 Q. And while it's not been produced by the respondent in

24 this case, am I correct in understanding that the

25 December 30th 2008 letter also concluded that KPM did

Page 50

11:18 1 not operate a main pipeline?

2 A. We can only guess about that. You have to look into the

3 letter.

4 Q. I may have to guess; I don't think you have to guess.

5 My question is: you know, do you not, sir, that you got

6 two letters from the Ministry of Energy and Natural

7 Resources, both of which concluded that KPM did not

8 operate a main pipeline, and you asked that they both be

9 reconsidered?

10 A. Well, you know, this letter dated 30th December, there

11 is no information that this letter actually has anything

12 to do with Mr Cornegruta, KPM or TNG; it could be any

13 other letter concerning any other case.

14 I can only answer you in any detail after I have

15 read the letter. But since the letter has been

16 withdrawn, I can't produce it. And there is no

17 information in this document concerning any particular

18 criminal case. I do not exclude the possibility that it

19 concerns the same criminal case, but it could be some

20 official correspondence; it could be any other matter.

21 So we need to be specific and refer to specific

22 documents, otherwise I cannot answer.

23 Q. I appreciate that. If it were in the record from the

24 respondent, we would be talking about it.

25 Let me ask you about Exhibit 4 to your third witness

Page 51

11:19 1 statement. This is the letter after your exchange with

2 the ministry and the ultimate withdrawal of their prior

3 letter. This is the letter that they reissued dated

4 13th February 2009, so a little over a week later.

5 Do you recall receiving this letter, or having this

6 letter in your criminal file?

7 A. Yes, this is the letter which is part of the criminal

8 file, and you can see a note to this effect. This is

9 one of the materials of the criminal case.

10 Q. And in this letter, am I correct, am I not, that --

11 MR HAIGH: I'm sorry, Mr Smith. I am looking for Exhibit 4

12 to the third witness statement and I'm not sure that

13 I have it attached to my copy.

14 MR SMITH: Excuse me. Let me make an enquiry. (Pause)

15 I think this was translated subsequent to our

16 receipt of the Russian by the respondent. So we'll

17 endeavour to get you a copy.

18 DR NACIMIENTO: We have it here; we can just give you

19 a copy.

20 THE CHAIRMAN: Oh, you have. (Handed) Thank you.

21 MR SMITH: Okay.

22 Mr Rakhimov, in this new Ministry of Energy response

23 I think it would be fair to say -- and tell me if you

24 disagree -- that the ministry went through the legal

25 definition of a "trunk pipeline" and ultimately

Page 52

11:22 1 concluded that it was ambiguous and they could not reach

2 a determination as to whether or not KPM operated a main

3 pipeline; correct?

4 A. In general, yes. In general I agree with you. So you

5 could interpret the content of this letter in the manner

6 you've just done.

7 Q. So the ministry that was responsible until 2007 for

8 licensing of main pipelines and the ministry that is

9 responsible in your country for interpreting the Law on

10 Oil, wherein the definition, such as it is, of a "main

11 pipeline" exists, ultimately could not reach

12 a conclusion as to whether KPM operated a main pipeline

13 when they reconsidered the issue after your contact;

14 correct?

15 A. Well, I don't know about the interpretation. But the

16 fact that neither the Ministry of Energy nor the Agency

17 for Natural Monopolies, the fact that both these

18 agencies decided that they were not competent to

19 determine whether it was a trunk pipeline, this is

20 correct.

21 Q. And the ministry, in the last paragraph, suggests that

22 the financial police conduct an appropriate expert

23 review by someone with specialised scientific knowledge;

24 correct?

25 A. In the very last paragraph of this letter, I understand

Page 53

11:24 1 it that in the ministry's opinion -- if I read word by

2 word:

3 "In the ministry's opinion ..."

4 That means that this is the ministry's opinion:

5 "... in order to determine the circumstances

6 decisive for the case consideration, to establish

7 an expert review ... "

8 So they are speaking about determination of the

9 circumstances which are significant for the case:

10 "... according to item 1 of Article 240, chapter 32

11 of the Code of Criminal Procedure, an expert review is

12 appointed in case the circumstances may be received as

13 a result of research of a study of the materials of the

14 case by an expert based on specialist scientific

15 knowledge."

16 So they refer to Article 240. They also comment

17 Article 83 of the same code, saying which person may act

18 as such an expert.

19 Q. Okay. Well, in fact it's true, is it not, Mr Rakhimov,

20 that you instructed the ministry to include that

21 language in its letter because four days before you

22 received this letter you had asked the Ministry of

23 Justice to have a forensic expert examine the question

24 for the financial police of whether my client operated

25 a main pipeline?

Page 54

11:25 1 A. I beg your pardon? Whom did I ask?

2 Q. You didn't ask, sir. My question to you: it is true, is

3 it not, that you instructed the Ministry of Energy to

4 include the language referencing the need for a forensic

5 examination under criminal procedure rules? And in fact

6 you had already commenced the process of such expert

7 examination four days earlier; isn't that true?

8 A. No, I did not give such instructions and I couldn't

9 possibly give such instructions. And why is it so

10 logical? Where do you see the logic behind it? If

11 I had already instructed to conduct such an expert

12 review, why would I give any instructions to include

13 such wording in this text and make them explain articles of CPC to

14 me? No, I did not give any

15 instructions. This is not correct.

16 Q. Okay. Let's turn to the forensic examination conducted

17 by the Ministry of Justice of this issue.

18 THE CHAIRMAN: Mr Smith, we will have to make a short break

19 at some stage.

20 MR SMITH: This is a good time.

21 THE CHAIRMAN: That's what I thought. So we'll meet again

22 at 11.45. Thank you.

23 I should tell you, as you probably heard before,

24 that during the break you should not discuss the witness

25 testimony with the parties.

DR NACIMIENTO: Mr Chairman, one issue: we were discussing

Page 55

11:27 1 the timing as of yesterday, because I believe that there

2 might be a difference, and we had addressed the

3 secretary also this morning. Could we maybe in the

4 break adjourn and look at the timing issues again?

5 MR SMITH: We'd be happy to discuss it.

6 THE CHAIRMAN: Whatever you do during the break with the

7 secretary, I couldn't care less!

8 (11.27 am)

9 (A short break)

10 (12.14 pm)

11 THE CHAIRMAN: Alright. It took us a bit longer because we

12 want to make sure that the timing calculation is correct

13 and what we will do in that regard.

14 It is obvious that our secretary made a mistake

15 yesterday and "gave" one hour too much to you. You had

16 used up one more hour than she had indicated to you.

17 Respondent's timing is correct. And then we took into

18 account what you used up today, up to now.

19 So I can tell you in the morning the claimant had

20 4 hours 5 minutes left; the respondent had 5 hours 27

21 left. Then this morning the following was used up:

22 respondent, for the direct, 18 minutes, which leaves the

23 respondent 5 hours 9 minutes; the claimant used up

24 1 hour and 29 minutes this morning, which leaves the

25 claimant 2 hours 36 minutes.

Page 56

12:15 1 Now, we discussed: how should we take into
 2 consideration that you got the wrong information last
 3 night? And we feel, taking into account that we still
 4 have two and a half days basically to go, the fairest
 5 solution would be to give one hour more to each party.
 6 I am aware that respondent may not need that. But we
 7 think under the circumstances the claimant could say
 8 that they relied on the information they got, and
 9 therefore we should give them that one additional hour.
 10 It therefore means that the claimants have 3 hours
 11 and 36 minutes left, which is not very much anyhow, and
 12 the respondent has 6 hours 9 minutes left. We would
 13 like to confirm that is the definite time left.
 14 Those are the rules. We have one correction now in
 15 view of the circumstances, but that does not mean that
 16 we will go beyond that. So please take into account, as
 17 we have always indicated, the timing as it is.
 18 Do you have any further comments in that regard? We
 19 tried our best to come up with a relatively fair
 20 solution. Okay.
 21 There we are. And now we continue, with some
 22 delay -- which goes on our account, of course -- with
 23 the cross-examination.
 24 MR SMITH: Thank you, Mr Chairman.
 25 We are going to put before the witness

Page 57

12:17 1 Exhibit C-109. Unfortunately this is not included in
 2 your binders, so I'll give everyone a moment to pull out
 3 the document. It's claimant's Exhibit 109.
 4 Mr Rakhimov, claimant's Exhibit 109 appears to be
 5 an order on performance of forensic construction and
 6 technical examination dated February 9th 2009 under your
 7 signature; is that correct?
 8 A. Yes.
 9 Q. And the individual or the department that has been asked
 10 to conduct a forensic technical examination is under the
 11 auspices or the responsibility of the Ministry of
 12 Justice; is that correct?
 13 A. Yes, exactly.
 14 Q. And in connection with this February 9th 2009 order that
 15 you provided for forensic examination, the first decided
 16 task of the examiner is:
 17 "To perform forensic construction and technical
 18 expert [examination] within the ... criminal [case
 19 under] investigation."
 20 Correct?
 21 A. It is "construction and technical", it is "construction
 22 and technical expert review". And they don't mention
 23 any economic issues.
 24 Q. Understood. And so this forensic examiner [to whom] you
 25 had issued this order requesting the examination was

Page 58

12:19 1 only to perform a construction and technical
 2 examination; correct? Not a legal review.
 3 A. One can explain that this kind of expert -- there is no
 4 expert review which would be classified as legal expert
 5 review. So the expert was put questions, received
 6 questions with respect to the technical and construction
 7 issues.
 8 Q. Okay. And in item 4 in this order, there was
 9 a direction:
 10 "To provide [that expert] with:
 11 "- all necessary documents related to the oil
 12 pipeline 'Oil Treatment [Plant] - Commodities and Raw
 13 Material Base, Opornaya station'."
 14 Correct?
 15 A. Yes, exactly.
 16 Q. And under the Rules of Procedure in Kazakhstan, and in
 17 particular Article 83 as it relates to forensic expert
 18 work, you understand that a forensic expert is not
 19 permitted to collect any materials on his own in
 20 connection with an investigation, but may only review
 21 those materials that are provided to him pursuant to his
 22 directions; correct?
 23 A. Yes. And if necessary he may request to receive
 24 additional materials.
 25 Q. But he may only receive those materials if he requests

Page 59

12:21 1 to review them, and then that will be considered by
 2 whom, his request?
 3 A. By the law enforcement bodies or body, or the body which
 4 ordered such expert examination.
 5 Q. And in this instance that body would be the financial
 6 police; is that correct?
 7 A. Yes, exactly.
 8 Q. Okay.
 9 Look, if you would, at tab 7 of your binder, which
 10 is a report prepared by the forensic expert in this case
 11 dated 13th February 2009. It's Exhibit C-110. Do you
 12 have that before you?
 13 A. Yes, I do.
 14 Q. So this expert that had been appointed pursuant to
 15 Exhibit C-109 rendered his written expert opinion four
 16 days after that order was issued; correct?
 17 A. Yes. The decision was made on 9th February, and on
 18 11th February this decision was received by the forensic
 19 Laboratory.
 20 Q. Okay. So it was actually received by the forensic
 21 laboratory on the 11th. So actually two days later he
 22 rendered his written opinion; is that correct?
 23 A. One can say three days probably.
 24 Q. Okay. And did you meet with this forensic examiner?
 25 A. When?

Page 60

12:23 1 Q. Prior to the issuance of his report that appears at
 2 C-110.
 3 A. The financial police is located in the city of Astana
 4 and I knew -- had known this expert; and not only him
 5 alone, but many other experts working at this
 6 laboratory.
 7 Q. My question to you is a bit more specific than that. My
 8 question to you is: did you meet with this expert
 9 regarding the order contained at C-109 prior to the time
 10 that he issued his report which appears at C-110?
 11 A. I can't reply with certainty. It is possible that I met
 12 with him with respect to this expert examination; it is
 13 possible that I handed this document to him. But I may
 14 be mistaken, because there were other investigators and
 15 other inspectors involved.
 16 Q. Okay. You know, do you not, Mr Rakhimov, that prior to
 17 the expert report which is contained at C-110, this
 18 expert had never before in his life classified
 19 a pipeline as main or non-main?
 20 A. In his life? I know this expert, he worked on other
 21 similar issues: for example, with respect to drilling
 22 new wells, he carried out such expert examination. So
 23 it may well be that he also examined other pipelines or
 24 not. In any case, I don't know this. But from my --
 25 Q. If -- I'm sorry. Go ahead.

Page 61

12:25 1 A. From my experience I can say that with respect to
 2 infrastructure and development of oilfields, he
 3 functioned as an expert at least in one case upon my order. I can't
 4 say that he had no experience with respect to this area
 5 of examination.
 6 Q. Well, if this forensic expert who has provided a witness
 7 statement in this case has testified in that statement
 8 that he had never before been asked to classify
 9 a pipeline as main or non-main, do you have any basis to
 10 disagree with his testimony?
 11 A. If he says it, then I can't object. I have nothing to
 12 object against it.
 13 Q. Let's look at Exhibit C-110. About a quarter of the way
 14 down the page it indicates that four documents were
 15 provided to this forensic expert for examination. Do
 16 you see that?
 17 A. Yes.
 18 Q. And these were the four documents that the financial
 19 police deemed to be all of the necessary documents,
 20 according to Exhibit C-109, that were necessary for this
 21 expert to render his expert determination; correct?
 22 A. These were the documents on the basis of which it turns
 23 out that these documents were sufficient for the expert
 24 to carry out the expert examination. I could not
 25 determine what volume of documents would be sufficient

Page 62

12:27 1 for the expert examination.
 2 If these documents were insufficient, then the
 3 examining expert or expert body should request
 4 additional materials. It's not for me to decide whether
 5 it is sufficient or not. If it is sufficient, they
 6 carry out the examination; if it is not, they request
 7 additional documentation. This is the procedure for
 8 forensic examination.
 9 Q. But your order appointing the forensic examiner says
 10 that you, being the financial police, are going to
 11 provide that investigator with all necessary documents;
 12 correct?
 13 A. Sorry, where is it indicated?
 14 Q. It's in Exhibit C-109, no. 4, under the heading,
 15 "[Ordered]".
 16 THE INTERPRETER: It is C-109?
 17 MR SMITH: Yes.
 18 THE INTERPRETER: There was probably a mistake in
 19 translation.
 20 A. Yes, to provide all the necessary documents to the
 21 experts.
 22 Q. And in fact, of the four documents that the financial
 23 police provided to this forensic expert as being all
 24 necessary documents for his project, one of those
 25 documents was in fact this order; correct?

Page 63

12:29 1 A. Yes, these are the documents. All the documents as
 2 listed here were submitted by the financial police. It
 3 turns out this way.
 4 Q. Okay. So in fact, as it relates to evidence that the
 5 financial police asked the expert to consider, putting
 6 aside its order directing the examination, you in fact
 7 only provided three items of evidence; correct?
 8 A. These are not evidence. I cannot determine the opinion
 9 of an expert providing evidence. What I provide is the
 10 necessary material for examination. It would be
 11 a breach on my part if I produced something as evidence.
 12 Q. Two of the items that were provided were the working
 13 project for the construction of the line, and I would
 14 ask you if you recall whether that is the document that
 15 appears at tab 11 in the binder. That's C-465. In
 16 other words, you provided the construction-related
 17 working project documents for the subject pipeline;
 18 correct?
 19 A. I provided the working design documentation for the
 20 construction of raw material base in Borankol village.
 21 Q. Okay. And then you also provided the act -- this is the
 22 fourth bullet in the examiner's report -- the act on
 23 availability of the completed project, and that appears
 24 in your binder at tab 12, C-469. Is that correct?
 25 A. Yes, it seems so.

Page 64

12:32 1 Q. Okay. Other than those two documents, the only other
 2 document that the financial police provided was a SNiP,
 3 which as I understand it is a construction or design
 4 norm, and the first one is 2.05.06-85* and the second is
 5 III-42-80*. Do you see that? Again we are looking at
 6 tab 7. Are you with me at tab 7, first page?
 7 Just so the record's clear, we've talked about the
 8 two working project documents. You also provided a copy
 9 of the order. But then the only other document that you
 10 provided -- and when I say "you", I mean the financial
 11 police -- were these two SNiPs; correct?
 12 A. Yes, it turns out so.
 13 Q. Okay. And these SNiPs are SNiPs for the design of
 14 a main pipeline; correct?
 15 A. Design and construction. Design and construction rules
 16 for design and construction of pipelines.
 17 Q. Well, it's not --
 18 A. I think they are called "main pipelines", but we can
 19 check it. Then if I check, I can say. Can you show me
 20 the documents? Because I'm afraid I can make a mistake.
 21 Q. I'll represent for the record, just out of the interest
 22 of time, that these SNiPs are for the design of main
 23 pipelines. I don't believe that's disputed, but counsel
 24 can certainly follow up if they would like.
 25 My question to you is: why was the financial police

Page 65

12:34 1 providing the forensic expert with the construction
 2 design norms that it deemed relevant to the question
 3 that he was being asked?
 4 A. What documents do you mean? And what do you mean by
 5 "relevant"?
 6 Q. Why were the [financial] police providing the forensic
 7 expert with SNiPs?
 8 A. I don't remember the details now, but I think that since
 9 I'm not an expert in this area, the expert was given all
 10 the materials of the case, and he selected what was
 11 necessary and he requested from me what was necessary.
 12 I think it was sufficient for him to make the required
 13 examination.
 14 It means I had the SNiPs in my materials of the
 15 case, as well as the design project and the act of the
 16 working commission, because I provided all the necessary
 17 documents with respect to the pipeline. I can say that
 18 I offered him all the materials of the case, and he
 19 could select what was necessary for his examination.
 20 Q. That's not what Exhibit C-110 says and what you
 21 testified earlier, is it, sir? In fact the expert
 22 didn't pick and choose among your file as to what he
 23 wanted. You only gave him four items: the order, the
 24 working project for construction, the act on the
 25 availability of the completed pipeline and these two

Page 66

12:36 1 SNiPs; correct?
 2 A. Judging by the Exhibit C-109, I provided all the
 3 necessary documents concerning the pipeline.
 4 Q. Let me ask you this, sir: if you look at tab 11 (C-465),
 5 which is one of the items that you provided, which is
 6 the working project for construction -- these are the
 7 design documents -- and specifically I would ask that
 8 you look behind tab 11 at section 4.3.5, pages 73 and 74
 9 of the Russian. The English pages unfortunately are not
 10 numbered.
 11 A. And which paragraph should I look at?
 12 Q. Let's look at the beginning, where it describes the
 13 pipeline that was the subject of the criminal
 14 investigation. It contains a description of the line.
 15 Then I am looking at the last paragraph of that section,
 16 after the bullet points. It says:
 17 "The design of the Borankol-RMB oil pipeline is made
 18 in accordance with VSN 2.38-85 'Design of commercial
 19 steel pipes' and SN 527-80 'Instruction for design of
 20 technological steel pipes'."
 21 Do you see that?
 22 A. Is it under tab 11?
 23 Q. Yes, it's under tab 11. It's at page 74 of the Russian.
 24 A. I thought there was some omission in the text. We have
 25 page 11, then page 16, then 53 and then 74. So it's not

Page 67

12:39 1 the entire project.
 2 Did you say page 76?
 3 Q. 74. Look at the top of the page. In section 4.3.5,
 4 after a description of the pipeline at issue in the
 5 criminal investigation, it indicates, does it not, that:
 6 "The design of the [subject] pipeline, is made in
 7 accordance with ..."
 8 And it cites two SNiPs; correct?
 9 A. Yes, I see this text:
 10 "The design of the ... pipeline, [was carried out]
 11 in [compliance] with VSN" --
 12 Q. I didn't get any of the answer.
 13 THE INTERPRETER: I'm sorry, sir. The witness is reading
 14 the corresponding line that:
 15 "The design of the ... oil pipeline, [was carried
 16 out] in [compliance] with VSN 2.38 ... and SN 527 ..."
 17 Q. My question to you is: you know, do you not, sir, that
 18 those design criteria are design criteria for the
 19 construction of an in-field pipeline?
 20 A. I'm sorry, which criteria are you talking about?
 21 Q. I don't think this is very confusing. Let me ask the
 22 question again so we can get through this.
 23 My question to you is: do you have 4.3.5 in front of
 24 you? Are you looking at it?
 25 A. I see page 74, and there are no numbered items here on

Page 68

12:41 1 page 74.

2 Q. I'm not getting the translation.

3 THE INTERPRETER: I'm sorry.

4 A. I am looking at page 74, and there are no numbered items

5 on page 74. I see no numbered items at page 74. Please

6 direct me where I should look to.

7 Q. Is there a bullet point at the top of the page?

8 A. Are you talking about the first paragraph here? Yes,

9 I see page 74 and --

10 Q. I am taking [you] to the next page, page 74: the page

11 that you have your right hand on. Do you see that? And

12 there is a paragraph. Do you see the first paragraph of

13 the page?

14 A. Mm-hm.

15 Q. And do you see that it says:

16 "The design of the Borankol -- RMB oil pipeline ..."

17 Do you see that? Are we together?

18 A. Mm-hm.

19 Q. And it says:

20 "... is made in accordance with VSN 2.38=85 ... and

21 SN 527-80 ..."

22 Do you see that?

23 A. Mm-hm.

24 Q. Okay. And you understand that those are the design

25 criteria for the manufacture and construction of

Page 69

12:44 1 you expect if I haven't read the document to which you

2 refer?

3 Q. Let's move on. Let me ask you a few other questions on

4 the evidence or the materials that were provided to the

5 forensic expert.

6 Did you provide the forensic expert with the letters

7 from the Ministry of Emergency Situations opining that

8 the subject pipeline was not a main pipeline?

9 A. No, I did not.

10 Q. Did you provide the forensic expert with the letter from

11 KMG, the national oil company's design division,

12 indicating that the subject pipeline was not a main

13 pipeline?

14 A. Not to waste your time, all the four letters, all the

15 four opinions that were produced by Mr Cornegruta in the

16 criminal case, or the opinions which stated [that] this

17 pipeline was not trunk pipeline, were not given to the

18 expert, not to affect his conclusions; to give him

19 an opportunity to make independent conclusions as to

20 determination of the type of this pipeline.

21 This was done in line with the requirements of the

22 Code of Criminal Procedure, because I did not have the

23 right to affect the opinion of such independent expert.

24 Q. Okay. So not only did you not provide the forensic

25 expert with the ultimate opinions of the Ministry of

Page 71

12:42 1 an in-field pipeline; you know that, do you not, sir?

2 A. No, I have no knowledge. I am not a construction

3 expert; I am a lawyer.

4 Q. Okay. You would agree with me, would you not, then,

5 that those two construction design norms were not

6 provided to the forensic expert in the list contained in

7 Exhibit C-110, but instead two SNIps for the design of

8 a main pipeline were provided by the financial police to

9 the examiner; correct?

10 A. I must study the SNIps that were provided to the expert,

11 and after that I will be able to give an exact answer.

12 Q. You are not a technical expert; correct? We've

13 established that.

14 A. That's correct; I said so.

15 Q. So why would you need to examine the SNIps? How would

16 you know what SNIps, as the financial police officer, to

17 provide to the forensic expert that is pertinent to his

18 examination?

19 A. Well, your previous question was put differently: you

20 gave certain SNIps to the expert, SNIps which were not

21 relevant to the in-field pipelines. And in order to

22 comment on this document, I must read this document

23 first, especially when you say that I do agree that I am

24 not an expert in the field of construction of pipelines.

25 What should I answer to your question? What answer do

Page 70

12:45 1 Emergency Situations, the national oil company,

2 NIPi Neftegaz, who designed the pipeline, but you also

3 didn't provide this expert -- who, if we are to believe

4 his testimony, had never before in his life classified

5 a main pipeline -- with any of the substantive analysis

6 that was conducted by each of those three organisations

7 in reaching their conclusion; is that correct?

8 A. Well, you have several portions in your question, so let

9 me address each of them.

10 To start with, as I said earlier, neither the

11 Ministry of Emergency nor KazMunaiGas provided me with

12 their opinions on the main pipeline.

13 Second, the expert based his opinion on the

14 materials that were provided to the expert. I had no

15 right to affect his opinion, to predetermine his opinion

16 based on the documents that were provided by the

17 defence, especially given that it was not clear on which

18 technical specifications, design documents they are based and the

19 parameters of the pipelines themselves are not mentioned. Probably

20 the

21 defence representatives know what the authors said, in particular

22 the Department on Emergency Situations.

23 I don't know that. But the

24 lawyers of Mr Cornegruta were aware of such things.

25 I did not have the right to give these documents to

the expert without having studied these documents about

the relevance of these materials and credibility of

Page 72

12:47 1 these materials and admissibility of these materials.

2 This is a duty that I have. The evidence that is
3 produced, including the evidence produced by the
4 defence, must be studied first regarding their
5 admissibility, credibility and relevance; and if you like, I can
6 elaborate on these matters.

7 Q. No, I think that's more than sufficient. Just to
8 conclude on this.

9 In fact, the only construction or design norms that
10 the financial police provided to the forensic expert
11 were SNIps for main pipelines, and if there is any
12 question about that, if you will look at tab 7, which is
13 C-110, you will see the two SNIps that are referred to
14 as -- those are main pipeline SNIps; correct? And this
15 is directly above the word "Examination" that appears on
16 the second page of the document.

17 A. Yes, I see.

18 Q. And the two SNIps that were provided by the financial
19 police, the only two SNIps that were provided by the
20 financial police to the investigator were SNIps for main
21 pipelines; correct?

22 A. That's right. It seems these are the documents produced
23 for the expert review, based on the content of the
24 expert's conclusions. I can answer that these were
25 these SNIps for main pipelines, but there are also other

Page 73

12:50 1 construction documents used by him in his search.

2 MR SMITH: We will hear from that witness next week. So
3 thank you very much. I have no further questions.

4 THE CHAIRMAN: Thank you very much.
5 Re-direct from respondent's side?

6 DR NACIMIENTO: No re-direct, but I have a request to submit
7 to the Tribunal, and this is before the witness is
8 released.

9 I have asked Mr Rakhimov in direct questions today
10 about the search conducted in May 2009 and the minutes
11 signed in respect of that search, and that was because
12 there were new facts raised through direct examination
13 in the testimony of Mr Stejar yesterday. Those were new
14 facts, they were not contained in his witness statement,
15 and we verified it this morning with Mr Rakhimov. And
16 we have two completely opposite and contradictory
17 descriptions of the same search, and the way those
18 minutes were signed, and how they were produced.

19 So what I request is to recall Mr Stejar, and to
20 hear him in witness-conferencing, and that the Tribunal
21 asks the questions.

22 THE CHAIRMAN: Alright. Any comments from the other side?

23 MR SMITH: I'm not exactly sure I understand the basis for
24 the request. Mr Stejar was here; he was thoroughly
25 cross-examined on his testimony. Mr Rakhimov has

Page 74

12:51 1 a different recollection. I don't think that's at all

2 extraordinary in a case, that witnesses have different
3 recollections of the same events. And I would think
4 that the Tribunal ultimately has to weigh that evidence.

5 I am not sure what the purpose is of recalling
6 Mr Stejar to simply have him repeat his testimony and
7 say that Mr Rakhimov's recollection is, in his view,
8 wrong.

9 THE CHAIRMAN: May I just approach this in a pragmatic way
10 for the time being. Is Mr Stejar here?

11 MR SMITH: I am informed he is not. He has returned home.

12 THE CHAIRMAN: He has returned home?

13 MR SMITH: Yes.

14 THE CHAIRMAN: Well, that takes care of the matter, I'm
15 afraid. You will recall that we have somewhere a rule
16 that if at the time of the examination of a witness no
17 party reserves the right to recall him or her, that
18 cannot be done. Also it's physically impossible.

19 But on the other hand, of course, the Tribunal is
20 aware of the different testimonies on this matter and
21 will have to evaluate that.

22 DR NACIMIENTO: Okay, thank you.

23 THE CHAIRMAN: Thank you. You said that took care of --

24 DR NACIMIENTO: No further questions.

25 THE CHAIRMAN: Any questions from you?

Page 75

12:53 1 MR HAIGH: Yes, I'd like to ask a couple of questions,
2 please.
3 (12.53 pm)

4 Questions from MR HAIGH

5 MR HAIGH: Major Rakhimov, can you tell me how you became
6 aware of the aware of the letter from President Voronin
7 to President Nazarbayev?

8 A. This letter was registered in the register of complaints
9 concerning crimes and accidents. We have this
10 procedure. So it was among the materials for
11 pre-investigation that I received in order to render
12 a procedural decision. Together with other materials of
13 pre-investigation, this letter was among the others.

14 MR HAIGH: It's my understanding that the letter in the
15 first instance would have been directed to
16 President Nazarbayev. Is that correct?

17 A. That's correct. You can see it from the content of the
18 letter that was addressed to President Nazarbayev.

19 MR HAIGH: Yes. And do you have knowledge of how the letter
20 then was transmitted from President Nazarbayev to the
21 file that you've just described?

22 A. Well, based on the administrative rules in Kazakhstan,
23 this letter was forwarded through the counsellor's
24 office to the Agency of Financial Police.

25 MR HAIGH: And what I was trying to determine is: how did

Page 76

12:55 1 you personally become aware of it? That is, the letter

2 from President Voronin to President Nazarbayev.

3 A. Well, the letter itself was among the materials for

4 pre-investigation. It was registered. And based on

5 this letter, the pre-investigation took place. So this

6 letter had to be among the materials, both for

7 pre-investigation and for the criminal file.

8 MR HAIGH: I can understand your answer up to the point

9 where you have the file in front of you on your desk.

10 But how did you first begin the process? What initiated

11 the process for you?

12 Did somebody tell you a letter had come in that was

13 from President Voronin to President Nazarbayev, and that

14 it had been registered, and that it was now part of

15 a file, and the file was brought to you? Is that the

16 sequence of events?

17 A. Let me explain. We have an accounting and registration

18 procedure, and when I receive the materials for

19 procedural decision-making, I must make sure that the

20 materials of pre-investigation have been duly registered

21 in the register for such materials. This is a mandatory

22 rule for incoming documents of this kind.

23 And it doesn't have to be President Voronin's

24 letter; it could be just a report of some operational

25 official who himself revealed a crime; it could be some

Page 77

12:56 1 article from a newspaper. But we have the same

2 procedure that applies for registration of such

3 documents. I must first make sure that I understand

4 what exactly caused the pre-investigation.

5 MR HAIGH: I am asking you to give us your recollection as

6 to how this matter came to your attention initially.

7 Can you tell us that?

8 A. About this letter? Well, the materials from the

9 department of investigation of economic and financial

10 crimes, I received a report, and this report was

11 forwarded to the investigation department, and the head

12 of the department entrusted me with the investigation.

13 And by this time these materials were already pulled

14 together; I don't remember if it was a binder or

15 otherwise.

16 And when I started studying these materials, the

17 first thing and the main rule of every investigator:

18 before you start looking at the materials, you have to

19 verify whether the deadlines have been met, whether the

20 complaint has been duly registered, whether there were

21 extensions for the period of review of the file, whether

22 the Prosecutor's Office was informed of any such

23 extension.

24 And once you've finished these formalities, you

25 start looking at the documents, and see what exactly

Page 78

12:58 1 they see as the components of the crime. This is the

2 procedure.

3 MR HAIGH: Alright. I think I understand from that answer

4 that two things occurred that led to the file being on

5 your desk and you beginning the process: there was

6 a report of some sort, and you say the head of the

7 department assigned the matter to you. Is that correct?

8 A. I was the one who initiated the case, but the materials

9 were forwarded to me, as you say. But once I decide to

10 initiate the case, the materials will become part of the

11 materials for the criminal file.

12 MR HAIGH: I am interested at the moment just in the events

13 that led to you having this file in your hands. So what

14 report did you receive in that regard?

15 A. I received the materials of pre-investigation and report

16 of the head of the department for economic crimes

17 investigation, Mr Azbergenov, where he requests to hand

18 over the materials of pre-investigation on unlicensed

19 activity for investigation. And when I received these

20 Materials, I found out that Mr Voronin's letter was

21 among the other documents in this file that I received,

22 and this was duly registered with a stamp and

23 everything.

24 MR HAIGH: Alright. And was there a note from

25 President Nazarbayev attached to the letter from

Page 79

13:00 1 President Voronin?

2 A. Yes, I recall such note, and on top of such a note was

3 another note by the chairman of the Agency of Financial

4 Police, and on top of which there was a notice of the

5 deputy head, and one more note by the head of the

6 department. So this is the administrative procedure

7 that was followed.

8 MR HAIGH: Would it have been exceptional or unusual for you

9 to receive an initiating direction or an initiating

10 request that comes from the Office of the President for

11 sort of duties that you carried out normally?

12 THE INTERPRETER: I will just reiterate the translation,

13 sir, to make it absolutely correct.

14 A. Well, I would answer to that, as I said, that the

15 investigator is an independent procedural body, and when

16 he makes his decisions, he bases his decisions on

17 internal beliefs, and any interference in the actions of

18 investigation results in liabilities, including criminal

19 liabilities.

20 So there was nothing unusual in these notes attached

21 to the letter. I did not see anything unusual in these

22 notes. The main thing was the document itself. This

23 document could come from the President or from anyone

24 else. The notes themselves, in my personal opinion, are

25 the instructions to look at this case, to consider this

Page 80

13:02 1 case, to consider this application.

2 As for myself, I did not see this as instructions

3 for me to act in a certain way. I just had to review

4 this matter and I had three options: whether I would

5 deny to initiate a criminal case; or I would decide to

6 initiate it; or I would forward it to someone else who

7 had the authority to do it instead of me, due to its

8 nature.

9 MR HAIGH: Can you tell the Tribunal how many previous

10 occasions before October 2008 you had received a file

11 assigned to you which had, let's say, a direct note --

12 whether we call it a request or an instruction -- from

13 the President to investigate or look at a matter?

14 A. Personally, in my work experience of criminal

15 investigation, [whether] there would be applications

16 which came to the President, I can't recall. I didn't

17 have such cases. But in my experience of investigator,

18 we had criminal cases which were controlled by the

19 administration -- which were supervised by the

20 administration of the President due to some complaints

21 Received.

22 And based on the -- this is my personal opinion

23 exclusively. But if I would follow the notes received

24 from the President, then I recall that in September the

25 department of financial police of Mangystau investigated

Page 81

13:04 1 the case of illegal return of VAT to Kazpolmunay, and it

2 would be more logical in the framework of that case to

3 carry out some investigative activities and not to bother with

4 initiation of some cases on pipelines. And we did

5 study that case and we understood that it had no

6 potential, the case that was initiated by Mangystau

7 Department of financial police.

8 And if we actually had intent to follow on the

9 presidential note, to follow some instructions or to

10 fabricate a case, it would be logical that we would

11 undertake certain measures in the other case I've just

12 mentioned.

13 Well, you did not really ask me about that, but

14 I just allowed myself to elaborate a bit, just to

15 explain.

16 MR HAIGH: So if I understand the first part of your

17 answer -- and I am giving you an opportunity to confirm

18 this, just to make sure I have it clear -- would this

19 particular note from President Nazarbayev, on top of the

20 letter from President Voronin, be, in your experience,

21 the first occasion with the financial police in which

22 you had received such a direct piece of information from

23 the President leading to an enquiry into whether

24 a criminal matter had occurred?

25 A. At least I can't recall other such situations. I said

there were similar cases concerning applications from

Page 82

13:06 1 some citizens in the framework of the criminal

2 investigation, but I can't recall the examples of this

3 kind, no.

4 MR HAIGH: Alright, thank you.

5 THE CHAIRMAN: Sergey.

6 (1.07 pm)

7 Questions from PROFESSOR LEBEDEV

8 PROFESSOR LEBEDEV: Mr Rakhimov, tell me, please: if the

9 protocol of investigation has been improperly made, for

10 instance with regard to the presence and signature of

11 witnesses who attended that process, would it be

12 possible to challenge -- and if possible, before whom --

13 that protocol as a document? Or once it is made, does

14 it thus become final and not possible to change by

15 anybody at the request of interested people, or their

16 attorneys and so on?

17 A. Thank you for the question. I just wanted to clarify

18 that. And I reiterate that the investigator is

19 a procedurally independent person, but it does not mean

20 that he can do whatever he likes. An investigator must

21 follow procedural rules, must follow the constitutional

22 provisions, must never breach the constitution and the

23 rights of the citizens. And all the actions carried out

24 in the framework of an investigation may be challenged

25 or appealed both with his direct supervisor and with the

Page 83

13:08 1 Prosecutor's Office and with the court. So there are

2 mechanisms for these kind of actions, and they are well

3 described in the procedural legislation.

4 As for the protocol of the search, or of

5 investigative activity, if I had breached any norms, or

6 breached someone's rights, in this case the person who

7 was searched could, on the first hand, bring this to my

8 attention by making a note in the protocol; and he could

9 also approach the supervisory authorities and bring

10 their attention to this fact.

11 I recall that there were plenty of complaints

12 regarding my investigative activities, but there was no

13 such complaint regarding the search. And that is

14 something I found strange.

15 PROFESSOR LEBEDEV: My second question of the same kind: if

16 you, or a person in your position, committed any

17 violation with regard to initiating a criminal case --

18 you said to us today that you made the decision to

19 initiate a criminal case -- would it be possible to

20 challenge it, according to the rules existing in

21 Kazakhstan, according to rules of the Criminal Code or

22 other existing regulations relating to criminal

23 procedure? Would it be possible to challenge it?

24 A. Absolutely right. Any decision of an investigator can

25 be appealed in a due manner, in a manner that is

Page 84

13:11 1 described by the criminal procedural rules, both with

2 the Prosecutor's [Office] and in court. I recall there

3 are corresponding CPC articles no. 109 and no. 110 about it.

4 Besides, when you initiate a criminal case, at the

5 beginning of this process the prosecutor must verify the

6 legitimacy of the decision to initiate the case, and

7 I must provide him with the resolution so that he can

8 verify it.

9 So there are two controlling mechanisms: the person

10 who is engaged in the criminal case may appeal it; and

11 also the supervisory authority has a duty to verify it.

12 So I am always on the edge of being challenged, or my

13 procedural decisions may always be challenged.

14 THE CHAIRMAN: Alright. No questions from my side. Do you

15 have a further question?

16 MR SMITH: A follow-up on the last one.

17 (1.12 pm)

18 Further cross-examination by MR SMITH

19 Q. Mr Rakhimov, do you recall that on several different

20 occasions written complaints were filed with the

21 financial police regarding the investigation of KPM and

22 TNG?

23 A. With the financial police?

24 Q. The Ministry of Justice, I apologise. With the Ministry

25 of Justice. So the record is clear: do you recall that

Page 85

13:12 1 a number of written complaints were filed on behalf of

2 KPM and TNG with the Ministry of Justice regarding the

3 conduct of the criminal case?

4 A. Well, you know, my answer is that there were many

5 complaints, but I cannot recall that the complaints

6 would come to the Ministry of Justice. This is not the

7 authority who supervises legitimacy of preliminary investigation.

8 MR SMITH: That's all.

9 A. There were complaints to the Prosecutor's Office. There

10 were complaints possibly to the agency, because I'm not

11 the person who actually reviews such complaints; there

12 are other bodies for that.

13 MR SMITH: Thank you.

14 THE CHAIRMAN: Alright. That concludes your testimony.

15 Thank you very much, Mr Rakhimov. You are now relieved.

16 This is obviously the time for the lunch break. We

17 have one hour, so we will meet again at 2.15 for the

18 last witness of today, I understand. Alright. Thank

19 you.

20 (1.13 pm)

21 (Adjourned until 2.15 pm)

22 (2.23 pm)

23 MR DANIYAR MUKHANOVICH TURGANBAYEV (called)

24 (Evidence interpreted)

25 THE CHAIRMAN: Alright, we resume the hearing. Slightly

Page 86

14:23 1 late, I admit, due to our fault.

2 Now, our last witness for today is Mr Turganbayev,

3 if I say it correctly. I wasn't quite sure because on

4 the witness statement that is mentioned as your first

5 name and two others are following. But Turganbayev, is

6 that the correct name to address you with?

7 THE WITNESS: Yes, it is my surname, Turganbayev, and my

8 first name is Daniyar.

9 THE CHAIRMAN: Alright. Would you be kind enough to read

10 out the declaration that you have in front of you?

11 THE WITNESS: I am aware that in my testimony I have to tell

12 the truth and nothing but the truth. I am also aware

13 that if I do not comply with this obligation, I may face

14 severe legal consequences.

15 THE CHAIRMAN: Thank you very much indeed.

16 Respondent, please.

17 DR NACIMIENTO: Thank you, Mr Chairman.

18 (2.24 pm)

19 Direct examination by DR NACIMIENTO

20 Q. Mr Turganbayev, you submitted two witness statements in

21 this arbitration. Is there anything that you would like

22 to add or amend?

23 A. No.

24 Q. Could you briefly describe your education, your

25 professional background and your current position?

Page 87

14:24 1 A. I have two educations: the first one is in economy and

2 the second is law. I have worked about 15 years in the

3 financial police, until I gradually reached my present

4 position.

5 Q. And what is your present position?

6 A. Currently I am deputy head of the department for

7 Mangystau region responsible for investigation and

8 operative activities.

9 Q. Thank you.

10 Mr Turganbayev, could you explain the difference

11 between inspections and investigations? This goes back

12 to some questions that were raised here in this

13 arbitration, and it might be useful to get some general

14 introduction to that.

15 A. I will try to explain it in my own words.

16 In the Criminal Procedural Code there is a clear

17 distinction of pre-investigation inspections, and then

18 investigation and handing over the case to a court. So

19 with reference to financial police, there is a clear

20 distinction of operative units, which work with

21 pre-investigation inspections, collect the respective

22 materials, check them, collect information. And

23 subsequently, in order to review these materials and to make a legal

24 procedural decision, they

25 are handed over to the investigation department, which

reviews the collected material, makes conclusions and

Page 88

<p>14:26 1 takes procedural decisions.</p> <p>2 Q. In your position, in which phase were you involved?</p> <p>3 A. In my position at that time I was senior inspector of</p> <p>4 the operative unit, and I received the application of</p> <p>5 President Voronin. And proceeding from Article 183 of</p> <p>6 the Criminal Procedural Code, I was obliged actually to</p> <p>7 do this: to accept this material for examination and</p> <p>8 carry out the inspection, pre-investigation inspection.</p> <p>9 Q. Thank you.</p> <p>10 A last question, again relating to an issue that was</p> <p>11 raised yesterday. Can I ask you to take a look at</p> <p>12 C-452. It's a document that we discussed yesterday in</p> <p>13 the context of another testimony; it's an expert opinion</p> <p>14 on forensic expert examination. Could I ask you to read</p> <p>15 out in the middle of the page -- I take it that you are</p> <p>16 looking at the Russian version -- could I ask you to</p> <p>17 read out the issues of investigation under items 1</p> <p>18 and 2.</p> <p>19 A. In compliance with my decision, I, within the pre-investigation</p> <p>20 inspection, put the following</p> <p>21 questions to the expert. First:</p> <p>22 "Based on the received Opinion of the Tax Committee</p> <p>23 of the Ministry of Finance of the Republic of Kazakhstan</p> <p>24 of 19th November 2008 to calculate the amount of income</p> <p>25 derived by Kazpolmunay from unlicensed activity, namely</p> <p>transportation and subsequent sales of oil through</p> <p style="text-align: center;">Page 89</p>	<p>14:31 1 carries out pre-investigation inspections.</p> <p>2 Q. And since that time, you have been promoted to deputy</p> <p>3 head of the financial police of the Mangystau region; is</p> <p>4 that correct?</p> <p>5 A. No, it's not like this, because I've been appointed to</p> <p>6 this position only this year, 10th July, by the order of</p> <p>7 the Agency for Combating Corruption and Economic Crimes.</p> <p>8 Q. Right. So now you are the deputy head of the financial</p> <p>9 police in the Mangystau region, right? Would you</p> <p>10 describe that promotion as substantial?</p> <p>11 A. I can explain it in simple words --</p> <p>12 Q. Would you just describe it as substantial, a significant</p> <p>13 promotion?</p> <p>14 A. No. I wanted to explain that my latest position in the</p> <p>15 structure of the financial police was equivalent to my</p> <p>16 present position. I was previously deputy head of the</p> <p>17 operative division, in the central structure of the</p> <p>18 financial police.</p> <p>19 Q. Okay. We're going to be handing you a binder of</p> <p>20 documents that I'll be asking you about this afternoon.</p> <p>21 (Handed) I'd like to just begin by asking you several</p> <p>22 questions about dates, to establish the sequence of</p> <p>23 events.</p> <p>24 If I could ask you just to look behind tab 1 at</p> <p>25 Exhibit C-12. That is the resolution you sent to the</p> <p style="text-align: center;">Page 91</p>
<p>14:29 1 product pipeline belonging to Kazpolmunay."</p> <p>2 The second question:</p> <p>3 "What is the actual amount of income received by</p> <p>4 Kazpolmunay through this unlicensed activity, namely</p> <p>5 transportation of raw oil through the product pipeline</p> <p>6 belonging to Kazpolmunay."</p> <p>7 I have been reading the English translation</p> <p>8 submitted as C-452, and this relates to an issue raised</p> <p>9 yesterday by the Tribunal. It seems that the</p> <p>10 translation is wrong. In item 2 there is "and</p> <p>11 subsequent sales"; this is not in the Russian</p> <p>12 [original].</p> <p>13 I have no further questions.</p> <p>14 THE CHAIRMAN: Alright. We turn to cross.</p> <p>15 (2.30 pm)</p> <p>16 Cross-examination by MR FLEURIET</p> <p>17 Q. Mr Turganbayev, good afternoon.</p> <p>18 A. Good afternoon.</p> <p>19 Q. I understood you to say in direct examination that in</p> <p>20 2008 you were a senior inspector of an investigative</p> <p>21 unit in the financial police. Is that correct?</p> <p>22 A. No, this is not correct. I was senior inspector not of</p> <p>23 an investigative but an operative unit. And I was</p> <p>24 trying to explain the difference now between operative</p> <p>25 and investigative divisions. An operative division</p> <p style="text-align: center;">Page 90</p>	<p>14:33 1 geology committee dated October 28th 2008; correct?</p> <p>2 A. Yes. Yes, that's correct.</p> <p>3 Q. I think my English copy is in a different font, but</p> <p>4 under subsection 3 of what is called "Ruled" in the</p> <p>5 English, you submit for consideration the following</p> <p>6 issue:</p> <p>7 "... compliance with the legislation of the Republic</p> <p>8 of Kazakhstan on subsoil use and carrying out of subsoil</p> <p>9 operations ..."</p> <p>10 Is that correct?</p> <p>11 A. Yes, I see it.</p> <p>12 Q. And then if you would turn with me to tab 4 of your</p> <p>13 binder, which is Exhibit C-86. This is the report that</p> <p>14 was delivered back by the geology committee; is that</p> <p>15 correct?</p> <p>16 A. Just a second. I am trying to find the Russian.</p> <p>17 MR FLEURIET: I think he said "yes" but something was cut</p> <p>18 off.</p> <p>19 THE INTERPRETER: He said he's looking for the Russian</p> <p>20 version.</p> <p>21 Q. Just so the transcript is clear, this is the report that</p> <p>22 was delivered back by the geology committee on</p> <p>23 November 11th; is that correct?</p> <p>24 A. Yes, it is correct.</p> <p>25 Q. And then by November 14th 2008 this report is signed,</p> <p style="text-align: center;">Page 92</p>

14:36 1 and by that time it contains the language that you will
 2 find behind the first red tab.
 3 I'm sorry, is your notebook tabbed? Do you see the
 4 first red marker there?
 5 I don't think this is in dispute, but I am just
 6 taking you through this chronologically. My question to
 7 you, sir, is: by November 14th 2008 this geology
 8 committee report is signed, and it contains this
 9 language in here regarding the fact that KPM and TNG do
 10 not have licences to use main pipelines; is that
 11 accurate?
 12 A. I can remark some difference. I will read what we have
 13 in this text in paragraph VIII, "Additional information".
 14 We have that:
 15 "The above ... licences issued to these legal
 16 entities by the Department of Energy ... do not give
 17 them the right to use the main gas pipelines, oil
 18 pipelines and oil-products pipelines."
 19 That is, it doesn't say that they don't have
 20 licences; it says something else.
 21 Q. Okay. Anyway, that language is included, and this
 22 report is fully signed by November 14th 2008, right?
 23 A. Yes. Yes.
 24 Q. Okay. And then three days later, on November 17th 2008,
 25 you instruct the tax committee to calculate the amount

Page 93

14:38 1 of income for transportation and sale of crude oil
 2 through the pipeline in question; correct?
 3 I will reference you to tab 6, which is
 4 Exhibit C-89. Specifically on page 2, under item 2, at
 5 least in the English, you are asking there for two
 6 calculations. And this document is dated
 7 November 17th 2008, right?
 8 A. Yes, that's correct. Yes.
 9 Q. Now, by November 17th, when you asked for a calculation
 10 of the amounts of profits earned by KPM, no governmental
 11 agency had yet concluded that KPM actually had a main
 12 pipeline, right?
 13 A. I can explain --
 14 Q. Can you just answer the question.
 15 A. -- in a simple way --
 16 Q. Had any governmental agency in Kazakhstan determined
 17 that KPM operated a main pipeline before you instructed
 18 the tax committee to calculate the amount of income
 19 earned from operation of that pipeline; yes or no?
 20 A. If you look at the first part of my decision, it says:
 21 "Pursuant to reply of the Agency ... for Regulation
 22 of Natural Monopolies ... Kazpolmunay ... does not have
 23 a state licence for operation of trunk gas ...
 24 pipelines."
 25 This was the sufficient grounds for me to start this

Page 94

14:41 1 investigation.
 2 Q. I will put my question a third time.
 3 When you instructed the tax committee on
 4 November 17th 2008 to calculate the amount of money
 5 earned by KPM through its operation of the pipeline, had
 6 any entity in Kazakhstan determined that KPM in fact
 7 operated a main pipeline? That's a yes or no question.
 8 The answer is no, isn't it, sir?
 9 A. Negative in what sense? I can explain.
 10 When I received the reply from the Agency for
 11 Regulation of Natural Monopolies, I obtained from the executor and
 12 inspector controlling this LLP the licence file, and
 13 there I saw in this file the correspondence between the
 14 Agency for Natural Monopolies and Kazpolmunay. Starting
 15 from June that year, there was quite a voluminous
 16 correspondence on the need to obtain a licence for main
 17 pipeline by KPM.
 18 So for me I was following this version of events,
 19 because in my view the existence of such correspondence
 20 was a proof to the fact that they did not have a -- that
 21 they were operating a main pipeline.
 22 Q. Okay. I'm going to give you a fourth chance to answer
 23 my question and then I'm going to move on.
 24 By the time you asked the tax committee to calculate
 25 the amount of income earned by KPM through operation of

Page 95

14:42 1 a main pipeline, had any governmental agency in
 2 Kazakhstan concluded that KPM in fact operated a main
 3 pipeline?
 4 A. No. No.
 5 Q. Don't you think, sir, that you should have determined
 6 whether or not KPM in fact operated a main pipeline
 7 before issuing instructions to calculate the amount of
 8 money earned by KPM through a main pipeline?
 9 A. No. I can say unambiguously no. Because this was
 10 following up different versions in the course of
 11 pre-investigation, and since I had letters confirming
 12 they had no licence for a main pipeline, this was
 13 sufficient grounds for me to order this expert
 14 examination. There was enough corroborating
 15 documentation both from the Ministry of Energy and from
 16 the Agency for Regulation of Natural Monopolies.
 17 I would also like to add that during this period of
 18 time, when I started dealing with this and looking
 19 through the licence files and correspondence relevant to
 20 that, it was clear that starting from May 2008 these
 21 legal entities, both KPM and TNG, had problems with the
 22 legislation in respect of obtaining the licence to
 23 operate a main pipeline. And our inspections started on
 24 14th October.
 25 Q. Let me refer you again to page 2 of Exhibit C-89, which

Page 96

14:45 1 is behind tab 6. I am under item 2, after the first
2 dash in the English version. The first question that
3 you instruct the tax committee to determine is:
4 "... the amount of profit gained by Kazpolmunay LLP
5 as a result of transportation and subsequent sale of its
6 crude oil through the oil products pipeline belonging to
7 Kazpolmunay LLP."
8 Is that correct?
9 A. Not sale, but marketing of their own oil by means of
10 this pipeline.
11 Q. Well, "marketing" refers to sale, doesn't it? I mean,
12 they are calculating the amount of income earned, as
13 I understand it, by transportation and then subsequent
14 sales of the product. Is that correct?
15 A. That's correct, they are related. No connotations, but
16 I just want to give you exact translation of the very
17 paper.
18 Q. Did you draft that specific request that I just referred
19 to?
20 A. Yes, of course I did draft it myself. I dealt with this
21 pre-investigative inspection.
22 Q. So I take it then that it was your own personal
23 determination that the profits from operation of a main
24 pipeline would include subsequent marketing or sales of
25 oil. Is that correct?

Page 97

14:49 1 Q. Well, that was just your personal determination;
2 correct? That has no basis in law, does it?
3 A. No, why? There is an Article 190 in the Criminal Code
4 which lists the matters as I quoted them. If a tool of
5 a crime -- or if the pipeline, in this particular
6 case -- for the use of which the entity did not have
7 a licence, such calculations will be legitimate.
8 Q. KPM could have sold its oil some other way, couldn't it?
9 A. Yes, they could, but they did not. If there was
10 transportation or transshipment of oil, then it wouldn't
11 be an issue.
12 Q. And you are aware, sir, aren't you, that KPM did not pay
13 itself to transport its own oil?
14 A. They provided additional service, which was the
15 transportation through the pipeline.
16 Q. Let me move on. By this date, November 17th, had you
17 determined which pipeline on KPM's field you were going
18 to call a main pipeline?
19 A. KPM? They only have one pipeline in their field: that's
20 from Borankol to the base. And based on that, I --
21 THE INTERPRETER: Just a second, sir.
22 Q. KPM in fact has other pipelines, does it not?
23 A. So this was the pipeline that I used for my
24 calculations.
25 THE INTERPRETER: Pardon me. That was the end of the answer

Page 99

14:47 1 A. That's correct. I can explain why it is correct.
2 Q. Well, let me -- I'm sure your counsel will let you. She
3 can come back to you on re-direct --
4 DR NACIMIENTO: Why don't you let him explain? You asked
5 the question.
6 MR FLEURIET: He had answered my question. I asked him if
7 it was his own personal determination, and he said,
8 "That's correct."
9 DR NACIMIENTO: And he wanted to explain why.
10 MR FLEURIET: You are welcome to come back on re-direct.
11 Now, the inclusion of marketing or sales of oil,
12 rather than merely the income from operation of a main
13 pipeline, ensured that the number produced by the tax
14 committee would be as high as possible, didn't it?
15 A. No, that's not correct. Why? Because this pipeline, in
16 my opinion, was the activity without having obtained the
17 licence, so it was the pipeline used illegally. If the
18 subject-matter of the illegal activities is used for
19 transportation of oil, own oil, even if they did not
20 have the pipeline, they wouldn't be able to obtain this
21 income.
22 So by means of -- how should I put it? -- by means
23 of this tool for the crime, they were able to obtain the
24 income, and that means that this accumulated as a result
25 of this crime.

Page 98

14:51 1 from the witness.
2 Q. You are not aware that KPM has other pipelines, for
3 instance the 1-kilometre pipeline between the storage
4 facility and the real main pipeline?
5 A. No, I am perfectly aware of that. But as far as
6 I recall, based on the project design, this was part of
7 the whole structure of the chain of pipelines which are
8 situated at KPM. So this is part of the general design.
9 Q. How did the tax committee know what pipeline in KPMs
10 field it was allegedly calculating the profits for? Did
11 you tell them?
12 A. I am not authorised to know how they made their
13 calculations. But a simple answer is that the tax
14 committee at that moment was visiting the field with
15 an inspection. I sent instructions, and I made orders.
16 And I don't know how exactly they calculated it, and
17 what they included in their calculations, and I didn't
18 have the duty to know.
19 Q. Did it even matter to the tax committee what pipeline in
20 KPM's field was supposedly the main pipeline?
21 A. Most likely, since they were there with documentary and
22 tax inspection of this particular legal entity, they had
23 with them their calculations, calculations of the income
24 of TNG and of KPM, separately for each entity.
25 I believe accordingly they had such conclusions.

Page 100

14:53 1 Q. That didn't answer my question. Let me try again. Did
2 it even matter to the tax committee which pipeline in
3 KPM's field was supposedly the main pipeline?
4 A. Well, my answer is: most likely the tax committee
5 doesn't know much about pipelines. However, based on
6 the fact that they had the entire set of documentation
7 of KPM, they drew relevant conclusions.
8 Q. It cannot have mattered much to the tax committee,
9 because nothing had been determined at this point in
10 time as to whether any KPM pipeline was a main pipeline
11 or not; correct?
12 A. I'm not sure I understood the question. Or you could
13 rephrase it probably.
14 Q. The point is the tax committee is calculating profits on
15 this alleged operation of a main pipeline, but nobody
16 has yet concluded that there is in fact such a main
17 pipeline in operation, right?
18 A. I believe the tax committee does not necessarily have to
19 separate between main pipelines or in-field pipelines;
20 this is not the area of their field of competence. They
21 just calculated the income which was obtained through
22 KPM pipeline. And at that moment KPM, when marketing or
23 selling their oil, they always did it by means of the
24 pipeline; by no other ways.
25 Q. Okay.

Page 101

14:56 1 The tax committee's response was received on
2 November 19th, and that's behind tab 7, Exhibit C-450,
3 right? I'm just asking about the date on Exhibit C-450.
4 This is the response from the tax committee received on
5 November 19th, right?
6 A. Yes, I can see that. It's correct.
7 Q. Okay. And then if you look with me behind tab 8 at
8 C-451, on the very next day, November 20th 2008, you
9 take the next step of appointing an economic expert to
10 run these calculations, right?
11 A. That's correct.
12 Q. And then this expert produces his first report back to
13 you on November 28th, and that is Exhibit C-452, behind
14 tab 9, that we looked at on your direct examination,
15 right?
16 A. That's right. 28th November, the expert Mr Askarov gave
17 me this report.
18 Q. At this point in time you've now gone through two
19 different stages of calculating or having others
20 calculate the amount of income that KPM allegedly earned
21 from operation of a main pipeline. But we're still
22 almost three months away from Mr Baymaganbetov's report
23 of February 13th, which is the first conclusion that's
24 issued that KPM does in fact operate such a pipeline; is
25 that correct?

Page 102

14:58 1 A. I'm not sure why you put the question in such
2 a [manner], about this "almost three months". But at
3 this moment the conclusions and the results of the
4 inspections that I've ordered and the tax inspections
5 are clear for me, as someone representing the operative
6 department.
7 It was clear for me that starting from May 2008,
8 after the new law was introduced, the new Law on
9 Licensing, these legal entities lacked the licences to
10 use the main pipelines. So we were verifying whether it
11 was indeed the case that they lacked such licence. And
12 we were able to demonstrate that it was indeed the case:
13 they had no such licences.
14 Q. So you had already decided on your own, I take it, that
15 in fact KPM operated a main pipeline, and the report
16 that's issued on February 13th was just to confirm the
17 conclusion you'd already reached. Is that your
18 testimony?
19 A. May I just clarify or correct you. I did not decide,
20 but I tested this possible -- I followed up this
21 version, among other versions I was following up.
22 Q. But in any event, you have run in November 2008 two
23 different computations of the amount of money that KPM
24 allegedly earned through operation of a main pipeline
25 before any expert or any governmental agency or anybody

Page 103

15:00 1 else in an official capacity gives you an opinion that
2 KPM in fact operates a main pipeline, which occurs in
3 February 2009, right?
4 A. Let me reiterate: yes, but I did not decide. I followed
5 up this version; nothing but that.
6 Q. Now, in your second witness statement at
7 paragraph 6.3 -- can you just read that paragraph for
8 a moment. It's only three sentences.
9 A. Yes.
10 Q. Your testimony here, Mr Turganbayev, is that other than
11 going to KPM and TNG's office to collect some financial
12 documentation, you had no further involvement in the
13 investigation of KPM or TNG after this was all handed
14 over to Mr Rakhimov by December 2008, right?
15 A. That's right. Most likely this is the case. But I want
16 to point out that I was a member of the investigative
17 operative group, so it might be so that I did go in.
18 But at least what is true is that after February 2009 -19
19 February 2009 was the last time I was visiting KPM, and
20 I've never been there since.
21 Q. In fact you had a very important meeting in
22 February 2009, did you not, sir, with Mr Baymaganbetov?
23 A. Could you please be more specific? Where was this
24 important meeting held, or event?
25 Q. You've testified that you had no further involvement, as

Page 104

15:04 1 I understand it, after this was handed over to

2 Mr Rakhimov. At least that was your testimony in your

3 witness statement; it now seems to be changing. But do

4 you recall a meeting in February 2009 that you had with

5 Mr Baymaganbetov?

6 A. I do not see where exactly I said that I met

7 Mr Baymaganbetov, particularly in KPM.

8 Q. You don't say it in your statement, and that's why I am

9 asking you about it. Mr Baymaganbetov talks about it in

10 his statement.

11 Do you have any recollection of that meeting, sir?

12 A. No, I don't. I don't recall meeting him in KPM.

13 I don't recall visiting KPM together with him.

14 Q. I didn't ask you if you had met with him at KPM; I asked

15 if you had met with him in February 2009.

16 A. Well, since it's been a long time ago, it's possible

17 that I did meet him, due to my official position, and it

18 could be in the course of the work of this investigative

19 operative group. Not more than that.

20 Q. Let's look at what he says about it. It should be

21 behind tab 11 in your binder, and I'd ask you to turn to

22 paragraph 3.3 of Mr Baymaganbetov's statement.

23 Do you see there he's talking about his meeting with

24 you on February 10th 2009 to turn over all of the

25 "substantial evidences" -- that's the English --

Page 105

15:06 1 including the following materials that he lists?

2 A. Yes, I see.

3 Q. Do you see in paragraph 3.5 he references that

4 February 10th 2009 meeting with you again?

5 A. Yes, I do.

6 Q. So there's really not much distinction between

7 inspection and investigation, as we've heard throughout

8 this case, is there, sir? You stayed involved, and you

9 were involved in the investigative apparatus, as you've

10 testified?

11 A. Let me explain to you, as I did earlier, that according

12 to the order of the Agency of Financial Police, they

13 created an investigative operative group, and I was one

14 of the members of this group. And sometime in the

15 course of the work of this group I might have met

16 Mr Baymaganbetov, but I do not recall this meeting.

17 Q. Let me refer you behind tab 10 in your binder to

18 Exhibit R-246. This is the report of your meeting on

19 February 10th, where that says that the material

20 evidences were introduced by you, Major Turganbayev, and

21 it again lists the four items of material evidence that

22 were then signed for by Mr Baymaganbetov; correct?

23 A. That's correct. But as I said, I was a part of the

24 group, and it's quite possible that I met him, and you

25 can see my signature. But what does that change?

Page 106

15:09 1 Q. Well, you were the one that turned over the material and

2 evidence to the expert who is now, three months after

3 your calculation of income, going to finally conclude

4 for you that this is in fact a main pipeline, right?

5 A. Sorry, I did not understand the substance of your

6 question. Are you asking whether I was the person who

7 personally handed over the documents? Is that your

8 question?

9 Q. I believe this report establishes that you handed over

10 the material evidence to the expert who now, in

11 February 2009, is finally going to get you your

12 conclusion that KPM in fact operates a main pipeline;

13 isn't that correct, sir?

14 A. Let me explain once again. The very fact that I was

15 a member of this investigative operative group, and

16 Mr Rakhimov was the head of that group, Mr Rakhimov at

17 that moment had a lot of other work to do in the

18 framework of this criminal investigation, and as one of

19 the operative officials, Mr Rakhimov most likely

20 instructed me to take these documents with me and take

21 them to the place. But it was following his

22 instructions; not otherwise.

23 And this is common practice: in order not to

24 overload the investigative bodies while they are busy

25 with the investigation of a criminal case, you need to

Page 107

15:11 1 help the investigator. And we do, we provide such help;

2 we work together.

3 MR FLEURIET: I have no further questions.

4 THE CHAIRMAN: Thank you very much indeed. Any questions in

5 re-direct?

6 DR NACIMIENTO: No questions, thank you.

7 THE CHAIRMAN: Mr Haigh?

8 MR HAIGH: No, thank you.

9 THE CHAIRMAN: Sergey?

10 PROFESSOR LEBEDEV: No.

11 THE CHAIRMAN: No questions from me.

12 So thank you very much. That concludes your

13 testimony. Thank you.

14 THE WITNESS: Thank you.

15 (3.12 pm)

16 THE CHAIRMAN: Do I understand correctly that that is all we

17 can do today?

18 MS ROEBUCK FREY: Yes, that's correct.

19 THE CHAIRMAN: This was our last witness today. Is that all

20 we can do today?

21 MR FLEURIET: That is correct, Mr Chairman. We are ending

22 early today.

23 THE CHAIRMAN: Okay. Well, you have, I think, withdrawn the

24 testimony of three witnesses. We have the two witnesses

25 for the video conference on Monday, and two further

Page 108

15:12 1 witnesses whom you want to examine, you indicated.

2 I am just looking at claimant, because we are

3 together aware of the little time you have left. Have

4 you given any thought to how you want to organise that,

5 or should I not discuss it with you?

6 MR SMITH: We are aware of the time constraints. I believe

7 the two witnesses by video [conference] will be first.

8 I believe their examinations will be relatively brief.

9 THE CHAIRMAN: I'm sorry, I didn't hear.

10 MR SMITH: My understanding is that we will have two

11 witnesses by video first thing Monday morning, and then

12 two additional witnesses live.

13 THE CHAIRMAN: Okay. Yes, respondent?

14 DR NACIMIENTO: Yes, that is right. We have scheduled for

15 9.30 the video conference with Dr Kim from Korea, and we

16 need to confirm a time for the second witness testifying

17 from Kazakhstan. So if you say it's going to be short,

18 can we say one hour later at 10.30?

19 MR SMITH: Depending on the length of your direct with

20 Mr Kim.

21 DR NACIMIENTO: Okay.

22 THE CHAIRMAN: I think we'll leave that to the parties, of

23 course.

24 DR NACIMIENTO: Okay.

25 THE CHAIRMAN: On the other hand, we have a common interest.

Page 109

15:15 1 Monday morning. Thank you.

2 (3.15 pm)

3 (The hearing adjourned until 9.30 am

4 on Monday, 8th October 2012)

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Page 111

15:13 1 Video-conferencing, as I know, can technically take

2 a lot of time, and we don't want to lose time on that.

3 So that's why I understand your question: when do you

4 want to set it up?

5 DR NACIMIENTO: Exactly. This is why I need to have

6 an approximate idea of the time. But it is something

7 that we can take up also among ourselves.

8 THE CHAIRMAN: I remember in another hearing I had a video

9 conference with Kazakhstan which was technically not so

10 easy. So if you are aware of that concern, we will

11 simply say we will meet at 9.30 on Monday.

12 MR SMITH: Mr Chairman, just for logistics, we have

13 an understanding that the witness will appear at the

14 video-conferencing facilities at the Ministry of

15 Justice?

16 DR NACIMIENTO: No, we decided to have him appear in a law

17 firm in Astana.

18 MR SMITH: Okay. And he will be alone in the

19 video-conference room; correct?

20 DR NACIMIENTO: In the video-conference room, yes, I think

21 he will be alone. Dr Kim asked whether he could be

22 accompanied by his lawyer, sitting in the room next to

23 him so that everyone can see him.

24 THE CHAIRMAN: Okay. That's all we have to do now. Have

25 a good weekend, however you want to spend it. 9.30 on

Page 110

INDEX

PAGE

MR ARMAN TESTEMIROVICH RAKHIMOV 1
(called)

Direct examination by DR NACIMIENTO 1

Cross-examination by MR SMITH..... 9

Questions from MR HAIGH..... 76

Questions from PROFESSOR LEBEDEV 83

Further cross-examination by MR SMITH 85

MR DANIYAR MUKHANOVICH TURGANBAYEV 86

Құрметті /
Direct examination by DR NACIMIENTO 87

Cross-examination by MR FLEURIET 90

<p>A _____</p> <p>able 70:11 98:20,23 103:12 about 5:11 14:15 16:17 20:1 21:14 25:19 29:13,20 30:11 31:1834:10 35:4 38:21 39:23 42:25 44:11 48:13 51:2,24,25 53:15 54:8 62:13 65:7 68:20 69:8 72:21,24 73:12 74:10 78:8 82:12 85:3 88:2 91:20,22 101:5 102:3 103:2 105:9,9 105:20,23 above 47:19 73:15 93:15</p> <p>above-mentioned 47:23,23</p> <p>above-named 47:19</p> <p>absence 23:4</p> <p>absolutely 20:10 49:2 80:13 84:24</p> <p>abstain 23:10</p> <p>accept 16:11 20:20 21:20 37:14,15 89:7</p> <p>acceptance 20:16 34:25 accidents 76:9 accompanied 110:22 accordance 4:12 16:9 67:18 68:7 69:20</p> <p>according 18:15 31:19 43:15 54:10 62:20 84:20,21 106:11</p> <p>accordingly 3:23 50:22 100:25</p> <p>account 56:18 57:3,16 57:22 accounting 77:17 accumulated 98:24 accurate 93:11</p> <p>accusations 20:6</p> <p>accuse 20:5 accusing 46:16 act 34:24 54:17 64:21 64:22 66:15,24 81:3 acting 8:12 11:15</p> <p>action 4:14,15,20 5:11 5:22 7:16,19 14:16 15:21 actions 4:18 80:17 83:23 84:2</p> <p>activities 14:15 15:4 24:12,12,18 31:11 45:21 82:3 84:12 88:8 98:18 activity 2:16 10:24 13:16 14:23,25 16:19 20:4 25:7,9 79:19 84:5 89:24 90:4</p>	<p>98:16 acts 31:18,18,22 32:6 actual 90:3</p> <p>actually 23:9,10 27:12 51:11 60:20,21 82:7 86:11 89:6 94:11 add 1:23 87:22 96:17</p> <p>additional 46:22 57:9 59:24 63:4,7 93:13 99:14 109:12 address 40:9 41:5 72:9 87:6</p> <p>addressed 41:15 42:4 42:13 56:2 76:18</p> <p>addressee 42:15</p> <p>adjourn 56:4</p> <p>adjourned 86:21 111:3</p> <p>administration 81:19 81:20 administrative 76:22 80:6</p> <p>admissibility 73:1,5</p> <p>admit 87:1 advisor 7:3 Advocates 1:22</p> <p>affect 12:23 71:18,23 72:15 affected 72:18</p> <p>aforementioned 40:8 45:15 afraid 22:21 65:20</p> <p>75:15 after 3:2 4:9 5:8 7:18 16:1 22:9 33:18 40:5 41:12 49:20 51:14 52:1 53:13 60:16 67:16 68:4 70:11 97:1 103:8 104:13,18 105:1 107:2</p> <p>afternoon 5:22 90:17 90:18 91:20 again 4:25 8:14 9:6 12:5 14:4 16:7 24:4 55:20 56:4 65:5 68:22 86:17 89:10 96:25 101:1 106:4 106:21 107:14</p> <p>against 12:8 31:8,9 62:12 agencies 14:2 53:18 agency 2:3 16:11 24:15 27:17,22,23 27:25 28:6,11,16,18 39:21 45:6,7 50:20 53:16 76:24 80:3 86:1091:794:11,16 94:21 95:10,14 96:1 96:16 103:25 106:12</p> <p>ago 105:16 agree 15:24 16:21,24 17:10,25 19:11 20:19 36:19 37:10 37:13 43:22,24 46:11,25</p>	<p>47:13,22 48:23 53:4 70:4,23 ahead 22:11 61:25 Aktau 6:1</p> <p>ALAN 2:11</p> <p>ALEXANDRA 1:18</p> <p>ALEXANDRE 2:23</p> <p>allegations 15:16</p> <p>alleged 101:15</p> <p>allegedly 100:10 102:20 103:24 allowed 8:12 82:13 almost 102:22 103:2 alone 61:5 110:18,21 already 37:16 55:6,11 78:13 103:14,17</p> <p>Alright 1:16 24:6 56:11 74:22 79:3,24 83:4 85:14 86:14,18 86:25 87:9 90:14 always 57:17 85:12,13 101:23 AMAN 2:13</p> <p>ambiguous 53:1</p> <p>amend 1:23 87:22</p> <p>amendment 21:21</p> <p>among 29:7 43:5,8 66:22 76:10,13 77:3 77:6 79:21 103:21 110:7</p> <p>amount 89:23 90:3 93:25 94:18 95:4,25 96:7 97:4,12 102:20 103:23 amounts 94:10</p> <p>AMY 1:18 analysis 22:22 72:5</p> <p>ANASTASIA 2:8</p> <p>Anatolie 1:12 12:3</p> <p>another 6:10,10,15 18:17,17 31:7 80:3 89:13 110:8 answer 2:25 3:3,8,12 3:17 10:9 18:22 19:1,19,23 22:1 23:1 24:2 26:21 27:9,14 28:21 32:4 34:19 40:25 44:9 51:14,22 68:12 70:11,25,25 73:24 77:8 79:3 80:14 82:16 86:4 94:14 95:8,22 99:25 100:13 101:1,4</p> <p>answered 98:6</p> <p>answering 24:1,3 41:11 answers 23:23</p> <p>anybody 83:15 103:25</p> <p>anyhow 57:11 anyone 80:23 anything 1:22 26:5 36:1 38:21 51:11 80:21 87:21 Anyway 93:21 apologise 18:24 19:2 26:11 44:18 85:24</p> <p>apparatus 106:9</p> <p>apparently 31:2 appeal 85:10 appealed 83:25 84:25 appear 3:1</p>	<p>110:13,16 appeared 1:19,22 APPEARING 2:1 appears 46:17 58:4 61:1,10 64:15,23 73:15 application 13:13,15 14:7,9,13,22 16:1 16:12 24:10,17 28:3 81:1 89:4</p> <p>applications 81:15 82:25 applies 78:2</p> <p>apply 28:1,14 appoint 40:15 appointed 54:12 60:14 91:5</p> <p>appointing 63:9 102:9</p> <p>appreciate 25:18 41:21 48:15 51:23 approach 75:9 84:9</p> <p>appropriate 40:15 53:22</p> <p>approximate 110:6</p> <p>approximately 29:5 appurtenance 42:22 arbitration 1:1,1,2 1:22 8:15 87:21 88:13</p> <p>area 62:4 66:9 101:20</p> <p>ARMAN 1:3 112:3</p> <p>article 12:20 16:9 33:7 54:10,16,17 59:17 78:1 89:5 99:3 Articles 21:17 Ascom 1:13 2:5</p> <p>aside 64:6 Askarov 102:16 asked 2:20 8:11 11:25 15:1 19:19 23:23,23 42:8 46:1 49:4 51:8 54:22 58:9 62:8 64:5 66:3 74:9 94:9 95:24 98:4,6 105:14 110:21 asking 14:1 37:15 42:10 78:5 91:20,21 94:5 102:3 105:9 107:6 asks 74:21</p> <p>assigned 79:7 81:11</p> <p>assume 27:14 50:5</p> <p>assuming 26:16</p> <p>Astana 61:3 110:17</p> <p>attached 10:1 52:13 79:25 80:20</p> <p>attempted 24:11</p> <p>attended 83:11</p> <p>attention 78:6 84:8,10 attorneys 83:16</p> <p>Ayrau 44:6 auspices 34:1 58:11 author 49:12 authored 46:17,18 authorised 100:12 authorities 25:1 27:11</p>	<p>72:20 84:9</p> <p>authority 20:1,2,2 81:7 85:11 86:7</p> <p>availability 64:23 66:25 available 23:11,12 avenue 1:4</p> <p>aware 12:24 26:22 27:3,21 38:5 57:6 72:22 75:20 76:6,6 77:1 87:11,12 99:12 100:2,5 109:3,6 110:10 away 102:22 Azamat 8:8 Azbergenov 79:17</p> <p style="text-align: center;">B</p> <p>back 8:14 88:11 92:14 92:22 98:3,10 102:12</p> <p>background 1:25 87:25 base 59:13 64:20 99:20 based 17:1,11,14,15 18:1,8,12 19:6,8 20:3,8 21:17 22:13 22:22 23:11,12,13 25:4 29:4 36:23 45:24 48:11 54:14 72:13,16 73:23 76:22 77:4 81:22 89:21 99:20 100:6 101:5</p> <p>bases 80:16 basically 57:4 basis 11:14,18 14:24 15:18 62:9,22 74:23 99:2</p> <p>Batalov 47:18 48:5 49:17,22 Batalov's 48:18 Baymaganbetov 104:22 105:5,7,9 106:16,22</p> <p>Baymaganbetov's 102:22 105:22</p> <p>became 76:5</p> <p>become 77:1 79:10 83:14 before 1:8 4:16 5:25 9:21,25 22:17 33:1 33:2 39:8 40:22 54:21 55:22 57:25 60:12 61:18 62:8 72:4 74:7 78:18 81:10 83:12 94:17 96:7 103:25 beg 21:25 55:1 begin 77:10 91:21 beginning 7:10 67:12 79:5 85:5 behalf 1:19,22 86:1 behind 20:12,14 39:17 44:22 45:4 50:12 55:10 67:8 91:24 93:2 97:1 102:2,7 102:13 105:21 106:17</p> <p>behold 50:8 being 16:15 28:8 38:25 40:18 63:10 63:23 66:3 75:10</p>	<p>79:4 85:12</p> <p>BEKETAYEV 2:9</p> <p>beliefs 80:17 believe 9:24 19:3 23:22 37:15 56:1 65:23 72:3 100:25 101:18 107:9 109:6 109:8 belong 2:8 38:17 47:20</p> <p>belonging 48:7,8 90:1 90:6 97:6</p> <p>beyond 47:25</p> <p>Berlibayev 41:16 42:10 Besides 85:4 best 57:19</p> <p>between 1:11 15:22,22 18:25 88:11 90:24 95:13 100:3 101:19 106:6 beyond 57:16</p> <p>binder 9:23 10:1 20:13 32:17 34:7 60:9 64:15,24 78:14 91:19 92:13 105:21 106:17</p> <p>binders 58:2 Bisenov 35:2,16 bit 26:10 56:11 61:7 82:13 BITENOV 2:16 bodies 2:8,9 27:11 40:10 60:3 86:12 107:24 body 14:16,19 18:17 40:12 41:6,6 42:5 60:3,3,5 63:3 80:15</p> <p>book 13:5</p> <p>Borankol 64:20 69:16 99:20</p> <p>Borankol-RMB 67:17</p> <p>both 4:6 5:11 7:8,12 7:12 34:9 46:7 50:17 51:7,8 53:17 77:6 83:25 85:1 96:15,21 breach 64:11 83:22 breached 84:5,6 break 55:17,23 56:4,6 56:9</p> <p>86:16 brief 109:8</p> <p>briefly 1:25 4:10 87:24 BRILL 2:17</p> <p>bring 84:7,9 bringing 10:22 11:2 15:25</p> <p>brought 11:14 15:25 77:15 bullet 64:22 67:16</p> <p>69:7 busy 107:24</p> <p>B-I-S-E-N-O-V 35:8</p> <p>BOCKSTIEGEL 1:9</p> <p style="text-align: center;">C</p> <p>calculate 89:23 93:25</p>
---	---	---	--	---	---

94:18 95:4,24 96:7 102:20 calculated 100:16 101:21 calculating 97:12 100:10 101:14 102:19 calculation 56:12 94:9 107:3 calculations 94:6 99:7 99:24 100:13,17,23 100:23 102:10 call 49:17 81:12 99:18 called 1:3 49:12,17,20 49:22 65:18 86:23 92:4 112:3,10 calm 4:23 came 3:19 4:19 23:17 25:17 78:6 81:16 capacity 8:12 104:1 card 50:15 care 56:7 75:14,23 Carnegie 2:17 carried 12:15 13:6 16:18 61:22 68:10 68:15 80:11 83:23 carries 91:1 carry 4:19 62:24 63:6 82:3 89:8 carrying 4:14 11:1 92:8 case 12:8,15,18 15:25 15:25 17:19 18:2,7 18:7,9,9,16 20:3,16 20:21 23:2,3 24:14 26:18 29:4,21 31:8 31:8,12 33:17,19 39:12,13 42:2,10 43:9 50:24 51:13,18 51:19 52:9 54:6,9 54:12,14 58:18 60:10 61:24 62:3,7 66:10,15,18 71:16 75:2 79:8,10 80:25 81:1,5 82:1,2,4,5,9 82:10 84:6,17,19 85:4,6,10 86:3 88:18 95:12 99:6 103:11,12 104:15 106:8 107:25 cases 2:5 29:6 31:9 81:17,18 82:25 categories 38:1 category 38:17 caused 78:4 central 91:17 centre 1:4 30:8 42:20 43:2,3 44:4,4,5 certain 3:20 5:25 36:24 70:20 81:3 82:10 certainly 10:9 40:3 65:24 certainty 61:11 chain 100:7 chairman 1:5,8,13,16 1:18 9:17 18:21,23 18:25 22:5,10,11	23:22 24:3 26:10 52:20 55:17,20,25 56:6,11 57:24 74:4 74:22 75:9,12,14,23 75:25 80:3 83:5 85:14 86:14,25 87:9 87:15,17 90:14 108:4,7,9,11,16,19 108:21,23 109:9,13 109:22,25 110:8,12 110:24 challenge 83:12 84:20 84:23 challenged 83:24 85:12,13 challenges 29:20 Chamber 1:2 chance 95:22 change 83:14 106:25 changing 105:3 chapter 54:10 charges 10:22 11:2,13 check 4:25 28:18 65:19,19 88:22 checkup 17:21 Chief 2:16 choose 66:22 chronologically 93:6 circumstances 23:4,9 54:5,9,12 57:7,15 cited 28:6,23 cites 68:8 citing 33:7 citizen 13:15,23 14:9 14:18 citizens 2:13 83:1,23 city 44:6 61:3 claimant 56:19,23,25 57:7 109:2 claimants 1:14,19 2:2 2:20 6:11,23 7:6 57:10 claimant's 33:3 47:12 58:3,4 clarifications 46:23 clarify 3:17 30:17 83:17 103:19 class 36:22 classification 37:6,7,8 classified 37:25 46:24 59:4 61:18 72:4 classify 62:8 clear 11:3 13:18 14:4 15:21 65:7 72:17 82:17 85:25 88:16 88:19 92:21 96:20 103:5,7 clearly 40:17 48:17 client 44:13 54:24 clients 43:6 45:21 close 36:4 code 4:13 5:5 11:10,16 12:21 15:22 16:4,10 21:18 23:1 54:11,17 71:22 84:21 88:16 89:6 99:3 codes 31:20 Cojin 24:8 26:9,17	collect 59:19 88:21,22 104:11 collected 10:23 11:14 15:14 16:1 22:22 88:25 Collegium 1:22 Colonel 45:16 column 5:14 combating 2:3,12 91:7 come 9:17 13:22 57:19 77:12 80:23 86:6 98:3,10 comes 29:8 80:10 commence 23:15 29:25 32:19 33:14 commenced 12:25 13:20 55:6 commencement 30:15 commences 12:17 commend 54:16 comment 5:6 70:22 comments 57:18 74:22 Commerce 1:2 commercial 67:18 commission 27:13,13 35:13 66:16 committed 20:5 21:5 21:11 22:16 84:16 committee 24:21 25:21,23 26:1,13 27:6 34:13,22,25 35:4,6 89:21 92:1 92:14,22 93:8,25 94:18 95:3,24 97:3 98:14 100:9,14,19 101:2,4,8,14,18 102:4 committee's 102:1 Commodities 59:12 common 4:19 107:23 109:25 companies 29:18 company 6:18 24:22 35:20 38:7,21 39:1 39:4,10 40:7,17,19 41:3,4,11 44:5 72:1 company's 38:14 71:11 competence 101:20 competent 27:24 28:13 40:9,12,18 41:6,6 42:5,7 53:18 complaint 17:20 78:20 84:13 complaints 76:8 81:20 84:11 85:20 86:1,5 86:5,9,10,11 complete 6:8 completed 8:2 16:12 16:14 64:23 66:25 completely 74:16 completion 5:8 7:19 compliance 2:12,12,14 2:14 11:16 16:3 68:11,16 89:19 92:7 comply 87:13 components 79:1	composition 35:12 computations 103:23 concept 11:9,10 32:13 32:15 concern 110:10 concerning 5:2 13:8 25:8 30:4,20 51:13 51:17 67:3 76:9 82:25 concerns 51:19 conclude 23:25 73:8 107:3 concluded 21:4,10 22:14 25:13,15 28:24 37:5 38:15 44:13 47:7 48:25 50:25 51:7 53:1 94:11 96:2 101:16 concludes 43:14 86:14 108:12 concluding 40:5 conclusion 33:8 35:23 37:17,22 38:8 42:21 43:2 46:21 53:12 72:7 102:23 103:17 107:12 conclusions 23:12 25:5 29:11 71:18,19 73:24 88:25 100:25 101:7 103:3 condensate 30:20 conduct 30:24 53:22 55:11 58:10 86:3 conducted 4:12,23 5:11 6:16 10:17 11:5 28:20 29:10 30:6 55:15 72:6 74:10 conference 108:25 109:7,15 110:9 confirm 1:14,15 10:4 10:11 14:1 34:3 39:6 57:13 82:16 103:16 109:16 confirmation 32:5 confirmed 27:18 confirming 96:11 confused 42:14,15 confusing 68:21 connection 16:18 26:23 34:13,22 58:14 59:20 connotations 97:15 consequences 87:14 consider 16:12 40:8 64:5 80:25 81:1 consideration 13:14 54:6 57:2 92:5 considered 13:14 14:8 14:13 27:16 28:9 29:1731:1448:11 60:1 Considering 45:15 47:19 constitution 31:19 83:22 constitutional 83:21 constraints 109:6	construction 29:9 36:20 58:5,17,21,21 59:1,6 64:13,20 65:3,15,15,16 66:1 66:24 67:6 68:19 69:25 70:2,5,24 73:9 74:1 construction-related 64:16 contact 53:13 72:18 contain 32:6,13,14 contained 14:14 15:17 16:2 22:20 24:7,15 61:9,17 70:6 74:14 containing 13:15 14:22 contains 67:14 93:1,8 content 38:23 42:15 53:5 73:23 76:17 context 89:13 continue 57:21 contradictory 74:16 contrary 37:10 controlled 81:18 controlling 85:9 conversation 4:17 convictions 23:13 Cooperation 2:10 copy 9:12 52:13,17,19 65:8 92:3 Cornegruta 24:8 32:23 33:18 46:16 51:12 71:15 72:22 Cornegruta's 8:8 47:2 47:16 48:16 correct 1:24 5:18 6:13 7:13 8:23 10:7,14 10:20 11:7 12:3,19 13:24 14:10 15:16 15:20 17:2 19:7,15 19:22 20:10,17,18 20:22,23 21:6,12,22 22:20 25:24 26:7,18 26:19 27:1,8,19,20 31:17 32:2,8 33:1 33:15 34:2,15,23 35:18 36:11,18 37:12,20 38:19 39:1 39:11 40:1,14,20 41:8,9 42:9 43:7 44:16,24 45:11,23 46:3,13,18 47:3,3,8 48:22 49:1,2,5 50:7 50:24 52:10 53:3,14 53:20,24 55:14 56:12,17 58:7,12,20 59:2,14,22 60:6,16 60:22 62:21 63:12 63:25 64:7,18,24 65:11,14 67:1 68:8 70:9,12,14 72:7 73:14,21 76:16,17 79:7 80:13 87:6 90:21,22 91:4 92:1 92:2,10,15,23,24 94:2,8 97:8,14,15 97:25 98:1,1,8,15 99:2 101:11 102:6	102:11,25 103:19 106:22,23 107:13 108:18,21 110:19 correction 57:14 correctly 4:16 9:11 87:3 108:16 correspondence 13:5 51:20 95:13,16,19 96:19 corresponding 68:14 corroborating 96:14 corruption 2:3,13 39:22 91:7 counsel 2:21 9:25 29:19 65:23 98:2 counsellor's 76:23 countries 15:11 country 2:12 34:2 53:9 couple 76:1 course 7:15 9:24 36:14 38:6 45:25 57:22 75:19 96:10 97:20 105:18 106:15 109:23 court 1:25 18:4,14 84:1 85:2 88:18 created 106:13 credibility 72:25 73:5 crime 2:4 16:3,13,15 21:5,11 22:15,24 23:4 77:25 79:1 98:23,25 99:5 crimes 39:22 76:9 78:10 79:16 91:7 criminal 4:12 10:22 11:2,16 12:8,15,21 13:8 15:25,25 16:25 17:13 19:5,12 20:3 20:4,7,12,16,21 21:3,16,18 22:19 23:1,2,6,7,10,15 25:14,16 28:10 29:5 29:15,25 30:15 31:8 31:9,11 32:20 33:5 33:14,17,19 34:14 36:16 38:6,9,16 39:9 43:7,17 46:12 46:16 47:2,16 48:16 50:2 51:18,19 52:6 52:7,9 54:11 55:5 58:18 67:13 68:5 71:16,22 77:7 79:11 80:18 81:5,14,18 82:23 83:1 84:17,19 84:21,22 85:1,4,10 86:3 88:16 89:6 99:3 107:18,25 Criminal-Procedural 16:10 criteria 36:17 68:18 68:18,20 69:25 critical 23:20 cross 90:14 cross-examination 9:18,20 57:23 85:18 90:16 112:5,8,12 cross-examined 74:25
--	--	--	---	--	---

<p>crude 94:1 97:6</p> <p>current 2:1 5:24 31:24 87:25</p> <p>currently 2:3 88:6</p> <p>cut 92:17</p> <p>C-101 36:3</p> <p>C-103 42:17,25</p> <p>C-109 58:1 60:15 61:9 62:20 63:14,16 67:2</p> <p>C-110 60:11 61:2,10 61:17 62:13 66:20 70:7 73:13</p> <p>C-114 4:5</p> <p>C-12 91:25</p> <p>C-450 102:2,3</p> <p>C-451 102:8</p> <p>C-452 89:12 90:8 102:13</p> <p>C-465 64:15 67:4</p> <p>C-469 34:7 35:4,5 64:24</p> <p>C-604 39:17</p> <p>C-632 20:13 22:17</p> <p>C-718 46:6</p> <p>C-719 47:12,12</p> <p>C-86 92:13</p> <p>C-89 94:4 96:25</p> <p>C-90 32:17 33:3 44:22 45:4</p> <p>C-92 44:17</p> <p>C-99 38:11</p>	<p>decision 17:24 19:12</p> <p>20:7,20 21:16 22:19 23:15,19 25:17</p> <p>29:14 33:14,16 39:8 60:17,18 76:12</p> <p>84:18,24 85:6 89:19 94:20</p> <p>decisions 12:22,22,23 13:7,9 16:5 17:22 18:11 80:16,16 85:13 89:1</p> <p>decision-making 77:19</p> <p>decisive 54:6</p> <p>declaration 1:10 5:14 87:10</p> <p>declarations 5:15,15 9:7</p> <p>declared 4:15</p> <p>deemed 62:19 66:2</p> <p>defence 72:17,20 73:4</p> <p>define 32:11</p> <p>defines 31:25</p> <p>definite 57:13</p> <p>definition 32:7 52:25 53:10</p> <p>delay 57:22</p> <p>delegated 6:15</p> <p>delivered 92:14,22</p> <p>demand 45:9</p> <p>demonstrate 103:12</p> <p>denied 27:5</p> <p>deny 17:24 18:7 23:10 39:6 81:5</p> <p>denying 41:22,25</p> <p>department 2:10,12 2:14,16 2:5 32:21 32:23 33:23,25 34:4 35:1 39:9 41:18 50:21 58:9 78:9,11 78:12 79:7,16 80:6 81:25 82:6 88:6,24 93:16 103:6</p> <p>depending 38:1 109:19</p> <p>deputy 2:9 41:11 42:12 80:5 88:6 91:2,8,16</p> <p>derived 89:24</p> <p>describe 1:25 2:6 4:10 39:25 87:24 91:10 91:12</p> <p>described 76:21 84:3 85:1</p> <p>describes 67:12</p> <p>description 67:14 68:4</p> <p>descriptions 74:17</p> <p>design 25:10 31:17 34:14,17,18,22 35:21 36:9,10,12,17 36:23 37:5,5 38:7 38:15,25 39:5 64:19 65:3,13,15,15,16,22 66:2,15 67:7,17,18 67:19 68:6,10,15,18 68:18 69:16,24 70:5 70:7 71:11 73:9 100:6,8</p>	<p>designed 37:11,17</p> <p>72:2</p> <p>designer 36:20</p> <p>designing 36:15</p> <p>desk 77:9 79:5</p> <p>detail 51:14</p> <p>details 66:8</p> <p>determination 19:14 27:24 28:13 29:18 37:11,19 40:13,19 53:2 54:8 62:1 71:20 97:23 98:7 99:1</p> <p>determine 19:16,24 42:5,22 53:19 54:5 62:25 64:8 76:25 97:3</p> <p>determined 25:21 94:16 95:6 96:5 99:17 101:9</p> <p>development 62:2</p> <p>difference 15:21 56:2 88:10 90:24 93:12</p> <p>different 17:17 28:5 31:8 39:3 46:7 75:1 75:2,20 85:19 92:3 96:10 102:19 103:23</p> <p>differently 70:19</p> <p>direct 1:20 2:21 20:23 56:22 69:6 74:9,12 81:11 82:21 83:25 87:19 90:19 102:14 109:19 112:4,11</p> <p>directed 24:8,15 45:1 45:21 76:15</p> <p>directing 44:14 64:6</p> <p>direction 59:9 80:9</p> <p>directions 11:18,19 59:22</p> <p>directive 12:18 13:2</p> <p>directives 85:3</p> <p>directly 34:4 73:15</p> <p>director 2:10 38:14</p> <p>disagree 52:24 62:10</p> <p>disagreed 3:20</p> <p>disappeared 18:19</p> <p>discretion 16:25 17:11 19:5</p> <p>discuss 50:6 55:23 56:5 109:5</p> <p>discussed 57:1 89:12</p> <p>discussing 55:25</p> <p>discussion 40:5</p> <p>dispute 37:19 93:5</p> <p>disputed 65:23</p> <p>disputing 33:25 34:3 37:21</p> <p>distinction 88:17,20 106:6</p> <p>distract 5:23</p> <p>division 2:11,13 71:11 90:25 91:17</p> <p>divisions 90:25</p> <p>document 15:8 26:3 29:21 33:1,2,17,18 33:20,22,23 34:9 35:4,18 36:2,4</p>	<p>43:21 45:5,12 48:3</p> <p>50:19 51:17 58:3 61:13 64:14 65:2,9 70:22,22 71:1 73:16 80:22,23 83:13 89:12 94:6</p> <p>documentary 100:21</p> <p>documentation 25:10 49:15 50:4 63:7 64:19 96:15 101:6 104:12</p> <p>documents 9:23 25:8 31:15,21 51:22 59:11 62:14,18,19 62:22,23,25 63:2,11 63:20,22,24,25 64:1 64:1,17 65:1,8,20 66:4,17 67:3,7 72:16,23,24 73:22 74:1 77:22 78:3,25 79:21 91:20 107:7 107:20</p> <p>done 6:7 28:23 29:2 29:24 30:12 45:9 49:3 53:6 71:21 75:18</p> <p>Dorofeev 39:2</p> <p>down 35:15 62:14</p> <p>dojos 38:17</p> <p>Dr 1:21 1:18,20 9:16 24:2 52:18 55:25 74:6 75:22,24 87:17 87:19 98:4,9 108:6 109:14,15,21,24 110:5,16,20,21 112:4,11</p> <p>draft 97:18,20</p> <p>drew 101:7</p> <p>drilling 61:21</p> <p>due 22:23 31:10 81:7 81:20 84:25 87:1 105:17</p> <p>duly 77:20 78:20 79:22</p> <p>during 3:7,10,12,13 4:1 7:14 8:19,20 30:23 38:5 55:23 56:6 96:17</p> <p>duties 5:24 80:11</p> <p>duty 73:2 85:11 100:18</p>	<p>educational 1:25</p> <p>educations 88:1</p> <p>effect 5:3 26:5 52:8</p> <p>either 18:6 28:24 30:5 39:12 42:14</p> <p>elaborate 73:6 82:13</p> <p>element 11:12</p> <p>elements 16:2</p> <p>Emergencies 33:21 35:14 43:23 45:8</p> <p>emergency 32:21,22 33:7,23 34:2,5,12 34:16,21 35:9 40:12 40:18 41:7,18 42:19 43:13,25 44:2,12,21 45:2,23 49:4 71:7 72:1,11</p> <p>employees 28:17 44:8</p> <p>end 99:25</p> <p>endeavour 52:17</p> <p>ending 108:21</p> <p>Endowment 2:17</p> <p>Energy 24:9 41:12 42:12,14 46:2 47:5 47:17 48:25 49:8 50:1,16,20 51:6 52:22 53:16 55:3 93:16 96:15</p> <p>enforced 45:10</p> <p>enforcement 2:9,10 14:16,19 60:3</p> <p>engaged 34:22 85:10</p> <p>engineer 36:20</p> <p>English 4:7,8 20:14 21:19 22:6 46:10 67:9 90:7 92:3,5 94:5 97:2 105:25</p> <p>enough 1:9 87:9 96:14</p> <p>enquiry 35:23 41:23 47:6 52:14 82:22</p> <p>ensured 98:13</p> <p>entered 20:11</p> <p>enterprise 33:9</p> <p>enterprises 2:14</p> <p>entire 48:3 68:1 101:6</p> <p>entities 25:2 39:3 93:16 96:21 103:9</p> <p>entitled 17:22 42:21 45:8</p> <p>entity 95:6 99:6 100:22,24</p> <p>entrepreneurial 16:19 31:10</p> <p>entrusted 78:12</p> <p>enumerated 47:1</p> <p>Environmental 2:12 2:14</p> <p>equivalent 91:15</p> <p>especially 2:5 36:22 70:23 72:17</p> <p>essence 4:18 40:21,25</p> <p>establish 54:6 91:22</p> <p>established 70:13</p> <p>establishes 107:9</p> <p>evaluate 75:21</p> <p>even 5:3 34:3 98:19 100:19 101:2</p> <p>evening 7:25</p>	<p>event 103:22 104:24</p> <p>events 75:3 77:16 79:12 91:23 95:18</p> <p>ever 3:10 29:21</p> <p>every 78:17</p> <p>everyone 58:2 110:23</p> <p>everything 1:12,14,24 79:23</p> <p>evidence 1:4 14:14 21:5,10,15,19,20 22:18 23:14,24 24:5 26:24 27:16 28:9,12 28:22 29:16 31:13 64:4,7,8,9,11 71:4 73:2,3 75:4 86:24 106:21 107:2,10</p> <p>evidences 105:25 106:20</p> <p>exact 70:11 97:16</p> <p>exactly 7:11 14:11 32:25 58:13 59:15 60:7 74:23 78:4,25 100:16 105:6 110:5</p> <p>examination 1:20 2:21 9:24 40:15 55:5,7 55:15 58:6,10,15,18 58:25 59:2 60:4 61:12,22 62:5,15,24 63:1,6,8 64:6,10 66:13,19 70:18 73:15 74:12 75:16 87:19 89:7,14 90:19 96:14 102:14 112:4 112:11</p> <p>examinations 109:8</p> <p>examine 54:23 70:15 109:1</p> <p>examined 39:20 61:23</p> <p>examiner 58:16,24 60:24 63:9 70:9</p> <p>examiner's 64:22</p> <p>examining 63:3</p> <p>example 18:17 61:21</p> <p>examples 83:2</p> <p>exceptional 23:8 80:8</p> <p>exchange 52:1</p> <p>exclude 51:18</p> <p>excluded 43:5</p> <p>excluding 23:5</p> <p>exclusively 81:23</p> <p>Excuse 52:14</p> <p>executes 50:21</p> <p>executive 47:18 48:18 49:13</p> <p>executor 46:19 49:18</p> <p>exhibit 4:5 32:17 33:3 36:3 42:17 47:12 50:15 51:25 52:11 58:1,3,4 60:11,15 62:13,20 63:14 66:20 67:2 70:7 91:25 92:13 94:4 96:25 102:2,3,13 106:18</p> <p>exhibits 50:13</p> <p>existence 95:19</p> <p>existing 84:20,22</p> <p>exists 53:11</p>
<p>D</p> <p>Da 48:21</p> <p>Daniyar 86:23 87:8 112:9</p> <p>dash 97:2</p> <p>data 21:13,15,19,21 22:15,18,23,24 23:3</p> <p>date 7:19,23,23 9:9,10 29:24 99:16 102:3</p> <p>dated 32:18 37:4 42:18 43:11 51:10 52:3 58:6 60:11 92:1 94:6</p> <p>dates 91:22</p> <p>DAVID 1:10</p> <p>day 1:6 2:23 5:23 102:8</p> <p>days 54:21 55:7 57:4 60:16,21,23 93:24</p> <p>deadlines 78:19</p> <p>dealing 15:14 18:18 96:18</p> <p>dealt 97:20</p> <p>December 20:15 22:25 23:18,19 29:13 30:2,14 31:3 32:19 39:21 41:15 41:24 50:18,25 51:10 104:14</p> <p>decide 17:18 18:3,13 18:14 19:8,16,22 20:2,3 63:4 79:9 81:5 103:19 104:4</p> <p>decided 6:2 29:25 32:19 53:18 58:15 103:14 110:16</p>	<p>D</p> <p>Da 48:21</p> <p>Daniyar 86:23 87:8 112:9</p> <p>dash 97:2</p> <p>data 21:13,15,19,21 22:15,18,23,24 23:3</p> <p>date 7:19,23,23 9:9,10 29:24 99:16 102:3</p> <p>dated 32:18 37:4 42:18 43:11 51:10 52:3 58:6 60:11 92:1 94:6</p> <p>dates 91:22</p> <p>DAVID 1:10</p> <p>day 1:6 2:23 5:23 102:8</p> <p>days 54:21 55:7 57:4 60:16,21,23 93:24</p> <p>deadlines 78:19</p> <p>dealing 15:14 18:18 96:18</p> <p>dealt 97:20</p> <p>December 20:15 22:25 23:18,19 29:13 30:2,14 31:3 32:19 39:21 41:15 41:24 50:18,25 51:10 104:14</p> <p>decide 17:18 18:3,13 18:14 19:8,16,22 20:2,3 63:4 79:9 81:5 103:19 104:4</p> <p>decided 6:2 29:25 32:19 53:18 58:15 103:14 110:16</p>	<p>E</p> <p>each 6:11 57:5 72:6,9 100:24</p> <p>earlier 48:10 55:7 66:21 72:10 106:11</p> <p>early 23:18 108:22</p> <p>earned 94:10,19 95:5 95:25 96:8 97:12 102:20 103:24</p> <p>easy 110:10</p> <p>economic 2:4,12 29:6 39:21 58:23 78:9 79:16 91:7 102:9</p> <p>economy 88:1</p> <p>edge 85:12</p> <p>education 87:24</p>			

<p>expect 40:23 71:1</p> <p>experience 36:21 62:1 62:4 81:14,17 82:19</p> <p>experienced 27:12</p> <p>expert 2:16 25:4 28:23 29:2,5,6,10,17,23 30:3,3,6,8,12,19,25 31:1,736:1037:1 40:15 42:21 43:15 53:22 54:7,11,14,18 54:23 55:6,11 58:18 58:22 59:3,4,4,5,10 59:17,18 60:4,10,14 60:15 61:4,8,12,17 61:18,20,22 62:3,6 62:15,21,21,23,24 63:1,3,3,23 64:5,9 66:1,7,9,9,21 70:3,6 70:10,12,17,20,24 71:5,6,10,18,23,25 72:3,13,14,24 73:10 73:23 89:13,14,20 96:13 102:9,12,16 103:25 107:2,10</p> <p>expertise 37:10</p> <p>experts 36:12 61:5,15 63:21</p> <p>expert's 73:24</p> <p>explain 5:21 10:8,10 10:21 15:3,4 32:3 40:21 59:3 77:17 82:14 88:10,15 90:24 91:11,14 94:13 95:9 98:1,4,9 106:11 107:14</p> <p>explained 4:17,22 5:2 5:4</p> <p>explanation 5:2</p> <p>explanations 41:10 45:16</p> <p>extension 78:23</p> <p>extensions 78:21</p> <p>extraction 33:10</p> <p>extraordinary 75:2</p>	<p>fairest 57:4</p> <p>fall 10:17 13:20</p> <p>familiar 43:4</p> <p>familiarised 40:4</p> <p>far 6:8 15:6 29:7 34:17 35:13 39:2,12 100:5</p> <p>fast 26:10</p> <p>fault 87:1</p> <p>features 38:1</p> <p>February 47:7,14 50:17 52:4 58:6,14 60:11,17,18 102:23 103:16 104:3,18,19 104:22 105:4,15,24 106:4,19 107:11</p> <p>feel 57:3</p> <p>few 8:20 25:19 71:3</p> <p>field 42:23 43:19 70:24 99:17,19 100:10,14,20 101:3 101:20</p> <p>fifth 25:4 48:17</p> <p>Fighting 39:21</p> <p>file 30:14 52:6,8 66:22 76:21 77:7,9,15,15 78:21 79:4,11,13,21 81:10 95:12,13</p> <p>filed 85:20 86:1</p> <p>files 96:19</p> <p>filibustering 18:22</p> <p>final 83:14</p> <p>finally 107:3,11</p> <p>Finance 89:22</p> <p>financial 2:10 2:6,8,11 2:15 3:19,22 6:10 10:6,12,16,11:4 12:24 13:6 14:25 15:18 16:15 25:24 26:4,13,23 27:4,11 39:23 41:2,9,22 42:8,11 44:19,20 45:1,7,20 46:1 47:6 47:14 50:21 53:22 54:24 60:5 61:3 62:18 63:10,22 64:2 64:5 65:2,10,25 66:6 70:8,16 73:10 73:18,20 76:24 78:9 80:3 81:25 82:20 85:21,23 88:3,19 90:21 91:3,8,15,18 104:11 106:12</p> <p>find 92:16 93:2</p> <p>Fine 46:17</p> <p>finished 18:23 78:24</p> <p>firm 110:17</p> <p>first 3:3,23 4:13 5:24 6:3,20 8:23 9:22 10:3,9 12:5 13:11 14:6 16:7 17:8,20 17:23 23:17 24:13 25:20,25 26:12,16 26:20 33:16 35:9,11 35:15 40:23 41:20 41:21 44:11 50:15 58:15 65:4,6 69:8 69:12 70:23 73:4</p>	<p>76:15 77:10 78:3,17 82:15,20 84:7 87:4 87:8 88:1 89:20 93:2,4 94:20 97:1,2 102:12,23 109:7,11</p> <p>FLEURIET 1:18 90:16 92:17 98:6,10 108:3,21 112:12</p> <p>floor 6:5,5,7</p> <p>follow 14:19 65:24 81:23 82:7,8 83:21 83:21</p> <p>followed 3:21 22:9 80:7 103:20 104:4</p> <p>following 10:21 11:17 39:24 46:23 56:21 87:5 89:19 92:5 95:18 96:10 103:21 106:1 107:21</p> <p>follow-up 85:16</p> <p>font 92:3</p> <p>foreign 18:18</p> <p>forensic 30:12,19,24 31:1,6 54:23 55:4 55:15 58:5,10,15,17 58:24 59:17,18 60:10,18,20,24 62:6 62:15 63:8,9,23 66:1,6 70:6,17 71:5 71:6,10,24 73:10 89:14</p> <p>form 24:10,17</p> <p>formalities 78:24</p> <p>forward 18:1,7,13,15 81:6</p> <p>forwarded 76:23 78:11 79:9</p> <p>found 35:14 79:20 84:14</p> <p>four 3:6 5:1 54:21 55:7 60:15 62:14,18 63:22 66:23 71:14 71:15 106:21</p> <p>fourth 18:2 24:25 64:22 95:22</p> <p>framework 82:2 83:1 83:24 107:18</p> <p>FREY 1:18 108:18</p> <p>Friday 1:6 1:1</p> <p>from 2:2,22,23 5:23 6:4,5,10,11 7:6 9:25 10:4,13,19 11:12 13:1,22,22 15:7 17:23 23:10 24:20 24:25 25:25 26:1,22 27:4,10,22 30:5 32:20,23 33:9,20,22 35:23 36:1,21 37:4 41:10 42:18,22 44:10,11 51:6,23 61:24 62:1 66:11 71:7,10 74:2,5,22 75:25 76:4,6,17,20 77:2,13 78:1,8 79:3 79:24,25 80:10,23 80:23 81:12,24 82:18,19,21,25 83:7 85:14 89:5,24 94:19</p>	<p>95:10,11,15 96:15 96:15,20 97:23 98:12 99:20 100:1 102:4,21,22 103:7 108:11 109:15,17 112:6,7</p> <p>front 1:10 16:23 22:4 68:23 77:9 87:10</p> <p>fully 93:22</p> <p>function 2:11 6:25</p> <p>functioned 62:3</p> <p>functions 2:6,15</p> <p>further 9:16 13:7 57:18 74:3 75:24 85:15,18 90:13 104:12,25 108:3,25 112:8</p>	<p>grounds 94:25 96:13</p> <p>group 1:13 2:5 34:13 104:17 105:19 106:13,14,15,24 107:15,16</p> <p>guess 51:2,4,4</p>	<p>hours 56:20,20,23,25 57:10,12</p> <p>hydrocarbons 33:11</p> <p>HELOISE 1:18</p>
					<p>I</p> <p>Ibararov 49:13,18,21</p> <p>ICC 1:4</p> <p>idea 110:6</p> <p>identified 41:7,24 46:8,9 48:17,19</p> <p>identifies 38:25 40:11 40:17</p> <p>IGOR 1:22</p> <p>III-42-80 65:5</p> <p>illegal 13:16 14:15,23 14:25 15:9 16:19 25:731:10 82:1 98:18</p> <p>illegally 98:17</p> <p>imminent 16:13,15</p> <p>impetus 11:23</p> <p>important 2:5 104:21 104:24</p> <p>impossible 75:18</p> <p>improperly 83:9</p> <p>include 26:14 27:6 54:20 55:4,12 97:24</p> <p>included 25:22 30:13 35:1 58:1 93:21 100:17</p> <p>including 73:3 80:18 106:1</p> <p>inclusion 98:11</p> <p>income 15:9 89:23 90:3 94:1,18 95:25 97:12 98:12,21,24 100:23 101:21 102:20 107:3</p> <p>incoming 13:5 77:22</p> <p>incorrect 11:8</p> <p>indeed 87:15 103:11 103:12 108:4</p> <p>independent 12:21 71:19,23 80:15 83:19</p> <p>INDEX 112:1</p> <p>indicate 14:21</p> <p>indicated 7:9 23:3 27:23 49:25 56:16 57:17 63:13 109:1</p> <p>indicates 62:14 68:5</p> <p>indicating 16:3 21:5 21:11,14 22:15,24 23:3 50:15 71:12</p> <p>indication 25:7</p> <p>indications 10:23</p> <p>indirect 25:6</p> <p>indirectly 45:16</p> <p>individual 58:9</p> <p>industrial 36:12,22 42:20 43:3</p> <p>industry 35:1</p> <p>influence 45:17</p> <p>inform 39:23</p> <p>information 13:16 14:15,23 16:12 51:11,17 57:2,8</p>
			<p>G</p> <p>GABRIEL 1:13</p> <p>gained 97:4</p> <p>GANI 2:16</p> <p>gas 33:11 36:11 44:6 48:10 49:7 93:17 94:23</p> <p>gathered 4:20</p> <p>gathering 47:20 48:9 49:1</p> <p>gave 56:15 66:23 70:20 102:16</p> <p>general 2:13,15 38:14 53:4,4 88:13 100:8</p> <p>geologic 24:20</p> <p>geological 26:1</p> <p>geology 25:20,22 26:13 27:5,13 92:1 92:14,22 93:7</p> <p>Gershtanskiy 37:22</p> <p>getting 69:2</p> <p>give 35:7 37:13 52:18 55:8,9,12,13 57:5,9 58:2 70:11 71:18 72:23 78:5 93:16 95:22 97:16</p> <p>given 5:11 17:23 23:22 26:25 27:5 30:19 33:17 40:8 66:9 71:17 72:17 109:4</p> <p>gives 45:7 104:1</p> <p>giving 82:16</p> <p>go 22:11 57:4,16 61:25 104:17</p> <p>goes 39:25 57:22 88:11</p> <p>going 1:7 4:5 9:22 57:25 63:10 91:19 95:22,23 99:17 104:11 107:3,11 109:17</p> <p>gone 102:18</p> <p>good 9:21 55:19 90:17 90:18 110:25</p> <p>governmental 94:10 94:16 96:1 103:25</p> <p>gradually 88:3</p> <p>graduated 2:2</p> <p>ground 6:5</p>	<p>H</p> <p>Haigh 1:10 52:11 76:1 76:4,5,14,19,25 77:8 78:5 79:3,12 79:24 80:8 81:9 82:15 83:4 108:7,8 112:6</p> <p>Hairusev 45:16</p> <p>half 57:4</p> <p>hand 9:23 69:11 75:19 79:17 84:7 109:25</p> <p>handed 13:7 52:20 61:13 88:24 91:21 104:13 105:1 107:7 107:9</p> <p>handing 88:18 91:19</p> <p>handled 14:10</p> <p>hands 79:13</p> <p>handwriting 9:15</p> <p>handwritten 5:16 9:13</p> <p>happy 56:5</p> <p>hard 44:7</p> <p>having 18:5 39:20 52:5 72:24 79:13 98:16 102:19</p> <p>hazard 36:23</p> <p>head 2:11 5:9 6:14,17 7:2 8:7 32:23 35:1 78:11 79:6,16 80:5 80:5 88:6 91:3,8,16 107:16</p> <p>headed 6:3,6</p> <p>heading 63:14</p> <p>hear 25:25 74:2,20 109:9</p> <p>heard 6:9 21:24 24:4 26:9,12,16 55:22 106:7</p> <p>hearing 1:4,7 26:6,7 39:3 86:25 110:8 111:3</p> <p>held 104:24</p> <p>help 108:1,1</p> <p>her 75:17</p> <p>HERVE 1:18</p> <p>high 98:14</p> <p>him 4:18 8:11,12 11:23 12:3 49:14 50:4 59:21 61:4,12 61:13 66:12,18,23 71:18 74:1,20 75:6 75:17 85:7 98:4,6 105:12,13,14,15,17 106:24 110:16,23 110:23</p> <p>himself 7:2 77:25</p> <p>HOLM 2:23</p> <p>home 75:11,12</p> <p>hour 56:15,16,24 57:5 57:9 86:17 109:18</p>	

82:21 88:22 93:13
informed 15:7 75:11
78:22 **infrastructure**
62:2 **initial** 13:3 44:15
initially 78:6
initial/starting 11:12
initiate 16:25 17:13,19
17:25 18:6,7 19:5
20:3,3,7,20 21:16 22:19
25:15 29:14 33:16 39:8
79:10 81:5,6 84:19
85:4,6 **initiated** 12:8
18:9 23:7 33:19 39:14
77:10 79:8 82:5
initiating 17:25 20:11
23:10 25:14 28:9 80:9,9
84:17 **initiation** 20:16
initiative 6:13
inspection 13:6 17:12
22:14,23 27:1,6,10
27:12 35:8 89:8,8 97:21
100:15,22 106:7
inspections 11:1 16:6
88:11,17,21 91:1 96:23
103:4,4 **inspector** 89:3
90:20
90:22 95:12
instance 60:5 76:15
83:10 100:3 **instead**
70:7 81:7 **institute** 1:2
36:9 37:5 37:5
38:7,15,20,25 39:5
instruct 45:8 93:25
97:3
instructed 11:22 26:13
30:24 44:21 54:20
55:3,11 94:17 95:3
107:20 **instruction**
26:25 27:2 27:5 45:19
67:19 81:12
instructions 45:7,9
55:8,9,12,14 80:25 81:2
82:8 96:7 100:15 107:22
insufficient 63:2
intensity 13:21 **intent**
82:7 **interest** 65:21
109:25 **interested** 79:12
83:15 **interference**
80:17 **internal** 23:13
80:17 **International**
2:10,17 **interpret** 53:5
interpretation 17:14
53:15
interpreted 1:4 48:21
86:24 **Interpreter**
2:23,23 19:18 21:24
22:2,8 63:16,18
68:13 69:3 80:12
92:19 99:21 99:25
INTERPRETERS
2:22
interpreting 53:9
interview 28:17
interviews 28:20
introduced 3:6,14 7:2
103:8 106:20
introduction 88:14
investigate 15:1 45:21

81:13 **investigated**
15:19
16:15 81:25
investigating 42:2
investigation
2:15,16
10:7,12,16,16,18
11:5,11,13,24 12:13
12:15,17 13:4,8,19
14:3,24 15:18 16:17
16:18 17:1,13,15,25
18:1,10 19:6,13
20:8,12 21:3,16,22
22:20 23:8,11,15
24:7,14 25:14,16
28:10 29:15 30:1,16
30:24 32:20 33:14
36:15,17 38:6 39:9
43:7 46:1,16 48:17
50:3 58:19 59:20
67:14 68:5 78:9,11
78:12 79:17,19
80:18 81:15 83:2,9
83:24 85:21 88:7,18
88:24 89:17 95:1
104:13 106:7
107:18,25
investigations
18:12 18:14 30:18
88:11 **investigative**
4:18,20 5:21 7:19
17:16,17 82:3
84:5,12 90:20
90:23,25 104:16
105:18 106:9,13
107:15,24
investigator 2:4
6:16 12:16,17,20
15:3,13 18:6 63:11
73:20 78:17 80:15
81:17 83:18,20
84:24 108:1
investigators 6:6
17:18,21,24 18:10
61:14 **involved** 14:3
34:12 35:21 61:15
89:2 106:8,9
involvement
104:12
104:25 **in-field**
36:18,25 37:7
37:12,18,25 68:19
70:1,21 101:19
issuance 61:1 **issue** 5:8
29:2,24 33:5 34:14,23
35:22 36:19 37:7
38:9,16 40:9 43:17
47:15 50:2 53:13
55:16,25 68:4 89:10
90:8 92:6 99:11 **issued**
9:5 58:25 60:16 61:10
93:15 102:24 103:16
issues 7:3 23:20 28:19
42:21 43:3 56:4 58:23
59:7 61:21 89:17
issuing 96:7 **item**
28:22 31:13 49:19
54:10 59:8 90:10 94:4

97:1 **items** 27:16 28:9
29:16 32:11 64:7,12
66:23 67:5 68:25
69:4,5 89:17 106:21
J
January 37:4 42:18
43:12 46:8 **join** 43:9
JOSEPH 1:21 **Judging**
67:2 **Judicial** 30:8 **July**
91:6 **June** 95:15
jurisdiction 1:7 34:1
just 6:9 11:3 17:8 19:19
25:18 32:5 45:12 49:3
52:18 53:6 65:7,21 73:7
75:9 76:21 77:24 79:12
80:12 81:3
82:10,13,13,17 83:17
91:12,21,24 92:16,21
93:5 94:14 97:16,18
99:1,21 101:21 102:3
103:16,19 104:7 109:2
110:12 **Justice** 2:9,9,16
30:9 30:13 31:2 54:23
55:16 58:12 85:24
85:25 86:2,6 110:15
justification 10:6,12
10:15,18,21
K
KARL-HEINZ 1:9
KATHERINE 2:20
Kaunev 8:8 **Kazakh**
2:2 38:20 39:4
Kazakhstan 1:16 2:4
2:9 12:19 13:17,23
15:10 16:10 33:7
36:10 39:22 40:13
59:16 76:22 84:21
89:22 92:8 94:16
95:6 96:2 109:17
110:9
KazMunaiGas 38:7
39:1,4,10,14 41:11
41:23 42:4,4 72:11
Kazpolmunay 12:8
24:21 42:23 47:25
82:1 89:24 90:1,4,6
94:22 95:14 97:4,7
KENNETH 1:18
KEVIN 1:18 **key** 2:11
Kim 109:15,20 110:21
kind 1:9 24:12 25:9
27:2 59:3 77:22 83:3
84:2,15 87:9 **King** 1:19
2:4,4 **Kleber** 1:4 **KMG**
71:11 **knew** 5:25 61:4
know 7:17 11:21 12:1
12:12 13:3 28:1,3
28:11,15 31:1,3,6 34:18
35:20,24 36:7 36:8 37:3
39:7,12 44:12 45:25
51:5,10 53:15
61:16,20,24 68:17
70:1,16 72:20 72:21
86:4 100:9,12
100:16,18 101:5 110:1
knowledge 12:4 13:9
53:23 54:15 70:2 76:19

known 41:16 61:4
Korea 109:15
KOTLYACHKOVA
1:18
KPM 2:19 5:106:1 8:5
10:7,13,17 11:5
13:20 19:6,14,22
20:8,22,25 23:15,25
25:21 26:14 27:7,18
27:25 28:7,24 29:6
30:21,23 31:9,15
33:4 34:14,23 35:21
35:23,23 36:15 37:4
37:6 38:8 39:11,25
40:14 41:3 42:3
43:15 44:23 45:3
46:3,8,12 47:1,7
48:8,14,15 50:2,25
51:7,24 16:16 32:18
85:21 86:2 93:9
94:10,11,17 95:5,6
95:17,25 96:2,6,8
96:21 99:8,12,19,22
100:2,8,24 101:7,10
101:22,22 102:20
102:24 103:15,23
104:2,11,13,19
105:7,12,13,14
107:12 **KPM's**
30:10 44:10 99:17
100:9,20 101:3
L
laboratory 60:19,21
61:6 **lacked** 103:9,11
LANGE 1:21
language 27:6 54:21
55:4 93:1,9,21 **last**
9:9,11 12:6 22:3,8 22:9
43:12,21 45:12 45:13
53:21,25 57:2 67:15
85:16 86:18
87:2 89:10 104:19
108:19 **last-but-one**
9:12 **late** 87:1
later 31:10 52:4 60:21
93:24 109:18 **latest**
91:14 **law** 2:2,9,10,10
14:15 14:19 32:10 33:8
53:9 60:3 88:2 99:2
103:8,8 110:16 **laws**
32:13,14 **lawyer** 8:8,8
70:3 110:22 **lawyers**
72:22 **leading** 15:23
82:22 **learned** 36:14
38:5 **least** 32:13 42:1
62:3 82:24 94:5 104:18
105:2
leave 8:11 26:8 109:22
leaves 56:22,24
LEBEDEV 1:9 83:7,8
84:15 108:10 112:7 **led**
6:9,10 22:16 34:25
79:4,13 **left**
56:20,21 57:11,12
57:13 109:3 **legal**
2:10 11:9 25:2 34:6
52:24 59:2,4 87:14
93:15 96:21 100:22

103:9 **legislation**
2:12,12,14 2:15
31:19,23,23,24 31:25
32:3,9,11 84:3 92:7
96:22 **legislative** 40:6
legitimacy 85:6
legitimate 99:7 **length**
109:19 **lengthy** 43:11
less 56:7 **let** 7:17 14:4
15:3 25:18 30:17 51:25
52:14 67:4 68:21 71:3
72:8 77:17 96:25
98:2,2,4 99:16 101:1
104:4 106:11,17
107:14 **letter**
10:4,13,19,25,25
11:6,12,23 12:3
13:22,23 15:2,6,13
15:17,24 16:16 32:18
37:3,9,22 38:12,23,24
39:15 39:20 40:4,22
41:13
41:13,20,22,24,25
42:3,13,16,18 43:4
43:11 44:8,14,15,22
45:6,23,24 46:5,9
46:11,17,18,19 47:9
47:15 48:4,13,18
49:4,9,12,13,18,21
49:25 50:9,17,18,25
51:3,10,11,13,15,15
52:1,3,3,5,6,7,10
53:5,25 54:21,22 71:10
76:6,8,13,14
76:18,19,23 77:1,3
77:5,6,12,24 78:8
79:20,25 80:21
82:19
letterhead 43:24 44:1
letters 24:7,15,25 43:5
44:11,15 45:18 50:11,20
51:6 71:6 71:14 96:11
let's 7:23 9:6 11:20
16:20 20:11 28:22 31:13
32:16,41 14:42 17:44:11
47:24 55:15 62:13 67:12
71:3 81:11 105:20
liabilities 80:18,19
licence 24:10,11,12,17
24:22,24 25:2,22 26:15
27:7,19 28:1
28:4,8,15,25 94:23
95:12,16 96:12,19 96:22
98:17 99:7 103:11
licences 93:10,15,20
103:9,13 **licensed**
24:13,19 **licensing** 24:25
25:8 27:25 31:23,23,24
31:25 53:8 103:9 **life**
61:18,20 72:4 **like** 1:23
2:22 6:13 10:2,4,8,11
15:11 15:20 17:8 18:22
26:4 31:22 32:4,5 40:25
57:13 65:24 73:5 76:1
87:21 91:5,21 96:17
likely 100:21 101:4
104:15 107:19 **likes**
83:20 **LIMITED** 1:14

line 2:23,24 9:9,12
64:13 67:14 68:14 71:21
lines 22:3 **list** 35:5,9,12
32:3,9,11 84:3 92:7
lists 9:6,8 99:4 106:1
106:21 **little** 52:4 109:3
live 109:12 **LLP** 1:22
2:8,8 12:8
42:23 97:4,7 **lo** 50:8
located 61:3 **logic** 55:10
logical 55:10 82:2,9
logistics 110:12 **long**
105:16 **longer** 56:11
look 4:6 6:19,19,21
7:5,8 9:6 15:13 20:11
32:16 34:7,24 35:5,15
36:3 38:10 38:22,24
39:7,15 42:17 46:4
49:11 50:12 51:2 56:4
60:9 62:13 67:4,8
67:11,12 68:3 69:6
73:12 80:25 81:13
89:11 91:24 94:20
102:7 105:20 **looked**
15:19 18:5
44:12 102:14
looking 35:11,12
44:17 52:11 65:5
67:15 68:24 69:4
78:18,25 89:16 92:19
96:18 109:2 **lose**
110:2 **lot** 107:17
110:2 **Ltd** 1:25 **lunch**
86:16
M
made 14:22 19:12
21:16 23:12,14,18
25:23 28:4 29:14,17
33:13 37:16 39:8
41:23 56:14 60:17
67:17 68:6 69:20
83:9,13 84:18
100:12,15 **main**
19:14,22,24 20:9
20:22,25 23:16,25
24:22 25:3,6,21
26:14 27:7,18 28:1
28:8,14,25 29:9,18
31:15 32:1,7,12,13
33:6,11,12 35:24
37:8,12,18 38:10,17
39:11 40:14,20 41:3
42:23 43:6 44:14,23
45:3 46:3 47:8 48:1
48:9,12 50:3 51:1,8
53:2,8,10,12 54:25
61:19 62:9 65:14,18
65:22 70:8 71:8,12
72:5,12 73:11,14,20
73:25 78:17 80:22
93:10,17 94:11,17
95:7,16,21 96:1,2,6
96:8,12,23 97:23
98:12 99:18 100:4
100:20 101:3,10,15
101:16,19 102:21
103:10,15,24 104:2
107:4,12 **Major** 76:5

106:20 **make** 5:6,12
17:22 18:11,25 19:13
26:3 27:24 28:13
37:10 40:13,18 52:14
55:17 56:12 65:20
66:12 71:19 77:19
78:3 80:13 82:17
makes 9:1 37:22
80:16
88:25 **making**
84:8 **MALTSEVA**
2:8 **management**
44:10 **mandatory**
77:21 **Mangystau**
32:22 33:24 41:19
81:25 82:5 88:7
91:3,9 **manifold**
47:20 48:9
49:1
manner 13:14 14:8
25:12 53:5 84:25,25
103:2 **manufacture**
69:25 **many** 14:2
36:12,13
61:5 81:9 86:4
MARAT 2:9 **marker**
93:4 **marketable** 37:24
marketing 97:9,11,24
98:11 101:22
MARTHA 2:17
MASON 2:4
material 18:16
22:23 39:12,13
59:13 64:10,20
88:25 89:7
106:19,21 107:1,10
materials 15:14
16:1,5 17:1,23
18:1,5,8 19:6,8
22:14 23:11
23:17,19 24:6,14,15
24:20 30:18 42:2
43:9 52:9 54:13
59:19,21,24,25 63:4
66:10,14,18 71:4
72:14,25 73:1,1
76:10,12 77:3,6,18
77:20,21 78:8,13,16
78:18 79:8,10,11,15
79:18,20 88:22,23
106:1
matter 1:1 14:17 23:6
51:20 75:14,20 78:6
79:7 81:4,13 82:23
100:19 101:2 **mattered**
101:8 **matters** 37:2
42:5 73:6
99:4 **MAX** 1:21
may 2:20 3:17 7:20,21
7:22,25 8:1,2,3,3
9:2,13,23 18:3,13
18:14 27:14 34:8
36:25 40:2 41:21
51:4 54:12,17 57:6
59:20,23,25 61:13
61:23 74:10 75:9
83:24 85:10,13
87:13 96:20 103:7

103:19 **maybe** 56:3
McGowan 1:24
mean 9:11 57:15
65:10 66:4,4 83:19
97:11
means 12:20 45:9 54:4
57:10 66:14 97:9
98:22,22,24 101:23
meant 19:19 **measures**
82:10 **mechanisms** 84:2
85:9 **medium-sized**
2:14 **meet** 55:20 60:24
61:8 86:17 105:17
110:11 **meeting**
104:21,24
105:4,11,12,23
106:4,16,18
member 104:16
107:15 **members**
35:6 106:14 **memory**
6:4 15:8 36:1 **mention**
58:22 **mentioned** 45:5
82:11
87:4 **merely** 98:12
Merits 1:7 **message**
14:17 **met** 3:23 61:11
78:19 105:6,14,15
106:15 106:24 **middle**
89:15 **midnight** 8:1
midway 35:15 **might**
17:14 41:25 56:2
88:13 104:17 106:15
MIHAIL 2:5 **Mineral**
24:9 41:12
42:12,14 49:8
minister 2:9 12:18,23
13:1,9 41:12 42:12
50:9
ministry 2:9,16 24:8
25:1 30:9,13 31:2
32:20 33:6,20 34:1
34:4,11,16,21
35:14 40:11,17
41:7,17 42:13,18
43:12,22 43:25
44:1,2,8,11 44:21
45:2,8,22 46:2
47:5,16 48:24
49:3,7,8 50:1,16,20
51:6 52:2,22,24
53:7,8,16,21 54:20
54:22 55:3,16
58:11 71:7,25
72:11 85:24 85:24
86:2,6 89:22 96:15
110:14 **ministry's**
54:1,3,4 **minute**
5:16 **minutes**
3:3,4,15,18
3:20,22,25 4:2 5:10
5:13,18 7:18 8:1,2
8:15,19,21,22,25
9:4,4,12 56:20,22
56:23,24,25 57:11
57:12 74:10,18
mistake 56:14
63:18

65:20 **mistaken**
61:14 **Mm-hm**
69:14,18,23
modification 49:11
MOHR 1:18
Moldovan 10:5
moment 3:24 4:1,2
58:2 79:12 100:14
101:22 103:3 104:8
107:17 **moments** 8:20
Monday 108:25
109:11 110:11 111:1,4
money 95:4 96:8
103:23
Monopolies 24:16
27:17,23 28:7,17 53:17
94:22 95:11 95:14 96:16
months 102:22 103:2
107:2
more 24:6 30:21 48:1
56:16 57:5 61:7 73:7
80:5 82:2 104:23 105:19
morning 9:21 56:3,19
56:21,24 74:15 109:11
111:1 **Moscow** 1:22
most 100:21 101:4
104:15 107:19
move 11:20 16:20
28:22 31:13 44:9
71:3 95:23 99:16
57:11 74:3,4 86:15
87:15 101:5,8 106:6
108:4,12
MUKHANOVICH
86:23 112:9
multi-agency 13:19
must 5:5,6 7:15 13:25
24:23 36:23 70:10 70:22
73:4 77:19 78:3
83:20,21,22 85:5,7
myself 5:22 6:4 25:7
26:19 40:4 81:2 82:13
97:20

N

NACIMIENTO 1:21
1:18,20 9:16 24:2
52:18 55:25 74:6
75:22,24 87:17,19
98:4,9 108:6 109:14
109:21,24 110:5,16
110:20 112:4,11
name 9:14 35:7
87:5,6 87:8
namely 89:24 90:4
names 39:3
NATALIA 2:8
NATALY 2:13
national 38:6,14,21
39:1,4,10 40:6,16
41:3,4,10 42:19 44:3
71:11 72:1 **Natural**
24:16 27:17 27:23
28:7,17 46:2 47:5,17
48:25 50:1 50:16 51:6
53:17 94:22 95:11,14
96:16 **nature** 81:8
Nazarbayev 10:5,14

10:19 11:7,22 12:2
12:14 13:24 14:8 45:22
76:7,16,18,20 77:2,13
79:25 82:18
Nazarbayev's 13:2
near 46:21 **necessarily**
101:18 **necessary** 4:19
34:9 34:10 40:9
59:11,23 62:19,20
63:11,20 63:24 64:10
66:11 66:11,16,19 67:3
need 23:22 34:8 51:21
55:4 57:6 70:15 95:16
107:25 109:16 110:5
Neftegaz 35:22 36:7,8
36:9,17 37:4,16 72:2
Negative 95:9 **neither**
53:16 72:10 **never**
15:19 39:13 41:9
49:9,22 61:18 62:8
72:4 83:22 104:20 **new**
24:12 50:13 52:22
61:22 74:12,13 103:8,8
news 29:1 **newspaper**
78:1 **next** 11:20 19:1
27:15 28:22 31:13 38:5
69:10 74:2 102:8,9
110:22 **next-to-last**
46:10 **night** 57:3
NIKIFOROVA 2:8
nine 29:5
NIPI 35:22 36:7,8,9
36:17 37:4,16 72:2
nobody 101:15 **none**
21:19 22:18
31:25 32:5
non-main 61:19 62:9
norm 65:4 **normally**
80:11 **normative** 25:8
31:14
31:18,18,22 32:6
norms 66:2 70:5 73:9
84:5
Norton 1:21 2:8,8
notation 25:20,22
26:14 **note** 5:6,16
9:1 25:20 26:3 52:8
79:24 80:2,2,3,5 81:11
82:8,18 84:8 **notebook**
93:3 **noted** 5:10 **notes**
80:20,22,24
81:23 **nothing** 30:10
62:11 80:20 87:12
101:9 104:5 **notice** 80:4
notwithstanding 42:7
November 32:18 89:23
92:23,25 93:7 93:22,24
94:7,9 95:4 99:16
102:2,5 102:8,13,16
103:22 **nowhere** 20:19
number 10:23 46:7
86:1 98:13
numbered 67:10
68:25 69:4,5

O

object 62:11,12 **objects**
42:23 **oblast** 32:22
obligation 5:5 87:13

obligations 5:4
obligatory 7:15 36:23
obliged 14:16 16:11
89:6
observation 28:6
obtain 24:11,17 95:16
98:20,23 **obtained**
15:7 95:11
98:16 101:21
obtaining 96:22
obvious 56:14
obviously 86:16
occasion 82:20
occasions 81:10
85:20 **occurred**
31:3 79:4
82:23 **occurs** 104:2
October 1:6 1:1 81:10
92:1 96:24111:4 **off**
92:18 **offered** 66:18
office 2:13,15 3:19,22
4:21 6:1 8:5,17 76:24
78:22 80:10 84:1 85:2
86:9 104:11 **officer**
70:16 **offices** 2:19
official 8:12 51:20
77:25 104:1 105:17
officials 3:19,21
107:19 **Oh** 52:20 **oil**
32:10 33:8,11 36:10
37:25 38:7,14
39:1,10 40:6,16
41:3,4,10 44:6 47:15
48:19 49:7 53:10
59:11,12 67:17 68:15
69:16 71:11 72:1
89:25 90:5 93:17
94:1 97:6,6,9,25
98:11 98:19,19
99:8,10,13 101:23
oilfields 62:2
oil-products 93:18
Okay 1:8 12:5 13:11
14:21 19:17 20:7
27:15 29:12 30:5
31:13 32:16 34:19
35:15 36:9 37:3 38:4
43:10 44:9 45:20,25
46:6,15 52:21 54:19
55:15 57:20 59:8
60:8,20 60:24 61:16
64:4,21 65:1,13
69:24 70:4 71:24
75:22 91:19 93:21,24
95:22 101:25 102:7
108:23 109:13,21
109:24 110:18,24
OLCOTT 2:17 **older**
31:23 **omission** 67:24
once 4:25 78:24 79:9
83:13 107:14 **one**
6:6,9,17 8:22 10:10
13:3 16:4 19:8,17
26:22 27:15 28:5,8
29:16 30:21 31:9
36:12,13 43:17 46:9
48:13 52:9 55:25
56:15,16 57:5

57:9,14 59:3 60:23
62:3 63:24 65:4 67:5
79:8 80:5 85:16
86:17 88:1 99:19
106:13 107:1 107:18
109:18 **ones** 47:24
only 1:13 4:1 8:7,20
8:22 9:8 10:15 11:4
12:17 13:3 17:10
27:14 30:21 47:24
51:2,14 59:1,20,25
61:4 64:7 65:1,9
66:23 71:24 73:9,19
91:6 99:19 104:8
open 21:3
opening 21:22 39:18
operate 35:24 43:6
44:14,23 45:3 47:7
51:1,8 96:23 102:24
operated 19:14,22 20:9
23:16 28:25 29:18 31:15
33:9 39:11 41:3 46:3,7
53:2,12 54:24 94:17
95:7 96:2,6 103:15
operates 20:22,25
40:14,19 104:2 107:12
operating 23:25 95:21
operation 94:19,23
95:5,25 97:23 98:12
101:15,17 102:21
103:24 **operational**
77:24 **operations** 92:9
operative 2:16 6:14
88:8,20 89:4 90:23
90:24,25 91:17 103:5
104:17 105:19 106:13
107:15,19 **operator**
28:14 **opining** 44:23
71:7 **opinion** 4:19 39:10
41:16 42:6 43:6 45:2,4
46:2 49:25 54:1,3,4
60:15,22 64:8 71:23
72:13,15 72:15 80:24
81:22 89:13,21 98:16
104:1
opinions 71:15,16,25
72:12
Opornaya 59:13
opportunity 5:12
71:19 82:16
opposite 74:16 **option**
18:15 **options** 18:6,13
81:4 **order** 5:23 6:7
12:25 54:5 58:5,14,25
59:8 60:16 61:9
63:9,25 64:6 65:9
66:23 70:21 76:11
88:23 91:6 96:13
106:12 107:23
ordered 60:4 63:15
103:4 **orders**
100:15 **ordinary**
14:17 **organisation**
34:18 **organisations**
72:6 **organise** 109:4
original 90:12
OTF-OSF 48:19
other 3:4 12:7 13:15

13:15 14:9 31:20
32:14 43:5,8 51:13
51:13,20 61:5,14,15
61:20,23 64:16 65:1
65:1,9 71:3 73:25
74:22 75:19 76:12
79:21 82:10,24 84:22
86:12 99:8,22 100:2
101:24 103:21 104:10
107:17 109:25 **others**
76:13 87:5
102:19 **otherwise**
51:22 78:15
107:22 **ourselves**
110:7 **out** 1:10 4:14,20
9:10 9:14 11:1 12:16
13:6 16:18 36:13 48:5
58:2 61:22 62:23,24
63:6 64:3 65:12,21
68:10,16 79:20 80:11
82:3 83:23 87:10
89:8,15 89:17 91:1
92:8 104:16 **outside**
8:17 **over**
2:11,12,14,14 13:7
52:4 79:18 88:18,24
104:14 105:1,24
107:1,7,9 **overload**
107:24 **own** 12:22
44:4 45:10 45:10
59:19 88:15 97:9,22
98:7,19 99:13 103:14

P _____
page 2:23,24 6:20,21
7:5 9:6 35:10,11,15
43:12,21 46:10
62:14 65:6
67:23,25 67:25
68:2,3,25
69:1,4,5,5,7,9,10,1
0 69:10,13 73:16
89:15 94:4 96:25
112:2 **pages** 6:19 67:8,9
paper 97:17
paragraph 10:3 12:6
13:11 14:2,7 16:8 16:23
21:7,8 40:5 45:12,14
46:9 48:18 49:6,11

53:21,25 67:11,15
69:8,12,12 93:13
104:7,7 105:22 106:3
parameters 38:2
72:19 **pardon** 21:25
55:1
99:25
Paris 1:5
part 15:3 29:3 38:20
38:25 43:7 52:7 64:11
77:14 79:10 82:15
94:20 100:6,8 106:23
participants 9:7,8
participate 34:17
participated 2:18
27:10 **particular**
18:8 21:7 24:19
25:12,16 32:21 42:19
47:17 51:17 59:17
82:18 99:5 100:22
particularly 105:7
parties 55:24 109:22
partly 47:22 **party** 57:5
75:17 **pass** 22:16
passed 21:3
PATRICIA 1:21 **pause**
12:10 17:9 18:25 21:23
40:3 44:24 47:3 52:14
pay 99:12 **Peace** 2:17
people 3:24 4:21 24:16
27:10,10,12 27:14 44:7
83:15 **perfectly** 100:5
perform 24:18 58:17
59:1
performance 58:5
performed 45:17
perhaps 24:4 37:15
period 29:13 78:21
96:17 **permitted**
59:19 **person** 18:19
25:17 26:2 35:7 49:21
54:17 83:19 84:6,16
85:9 86:11 107:6
personal 23:13 36:21
42:6 80:24 81:22 97:22
98:7 99:1 **personally**
39:13 42:1
77:1 81:14 107:7
persons 3:5 6:17 34:6

43:22
pertinent 70:17
phase 89:2
physically 75:18 **pick**
66:22 **piece** 82:21
pipeline 19:15,22,24
20:9,22,25 23:16
24:1 25:5,6,6,11,12
25:22 26:15 27:7,18
28:1,8,14,15,25
29:8,9,19 30:4,10
30:11,13,20,22,22
30:23 31:2,16 32:1
32:1,7,12,14 33:5,5
33:6 34:14,17,23,25
35:20,22,24 36:15
37:6,7,8,12,12,17
37:18,18 38:8,10,16
39:11,25 40:14,20
41:4 43:6,16,19
44:14,23 45:3 46:3
46:12,25 47:1,8,15
48:10,12,14,15,19
48:20,24 49:1 50:2
50:3 51:1,8 52:25
53:3,11,12,19 54:25
59:12 61:19 62:9
64:17 65:14 66:17
66:25 67:3,13,17
68:4,6,10,15,19
69:16 70:1,8 71:8,8
71:12,13,17,17,20
72:2,5,12 73:14
90:1,5 94:2,12,17
94:19 95:5,7,17,21
96:1,3,6,8,12,23
97:6,10,24 98:13,15
98:17,20 99:5,15,17
99:18,19,23 100:3,4
100:9,19,20 101:2,3
101:10,10,15,17,22
101:24 102:21,24
103:15,24 104:2
107:4,12 **pipelines**
24:23 25:3 30:21
31:1733:9,11 33:12
36:11,18 37:23,24
38:18 42:22,23
46:7,23,24

47:19,20,23,24,25
48:1,5,6,9,9 53:8
61:23 65:16,18,23
70:21,24 72:19,21
73:11,21,25 93:10
93:17,18,18 94:24
99:22 100:2,7 101:5
101:19,19 103:10
pipes 67:19,20 **place**
2:19 33:10 77:5
107:21 **planned**
5:22 **Planning** 12:15
plant 37:23 59:12
please 9:18,21 21:7
35:17 36:2,3 37:13
39:17 40:21 41:13
47:9 49:9 57:16 69:5
76:2 83:8 87:16
104:23 **plenty** 84:11
pm 56:10 76:3 83:6
85:17 86:20,21,22
87:18 90:15 108:15
111:2
point 33:10 69:7 77:8
101:9,14 102:18
104:16 **points** 67:16
police 2:11
2:7,8,11,15 3:19,22
6:10 8:16 10:17 11:4
12:24 13:6 15:1
16:16 25:24
26:4,13,23 27:4
39:23 41:2,9 41:23
42:8,11 44:19 44:20
45:1,7,20 50:21
53:22 54:24 60:6
61:3 62:19 63:10,23
64:2,5 65:2,11,25
66:6 70:8,16
73:10,19,20 76:24
80:4 81:25 82:20
85:21,23 88:3 88:19
90:21 91:3,9
91:15,18 106:12
police's 10:7,12
15:18
46:1 47:6,14
POPOVICI 2:5
portions 72:8 **posed**

26:20 **position** 2:1 7:1
8:21 23:9 37:14 84:16
87:25 88:4,5 89:2,3
91:6,14,16 105:17
possess 26:14 27:7,18
28:8
possibility 18:2 23:5
51:18 **possible** 6:8
61:11,13 83:12,12,14
84:19 84:23 98:14
103:20 105:16 106:24
possibly 55:9 86:10
potential 36:23 82:5
practice 107:23
pragmatic 75:9
predetermine 72:15
preliminary 10:24
16:17 17:15 18:10 18:12
24:7 30:18
premeditated 12:9,13
premises 6:3 8:11
prepared 60:10
presence 16:3 22:24
23:4 83:10 **present**
3:1 4:1,11 5:1 5:6 6:11
7:14,16 8:6 8:9,19,20
26:25 88:3,5 91:16
presentation 28:4
presented 33:18
President 10:5,5,13
10:14,19,19 11:6,7
11:12,21,22 12:2,2
12:14,22 13:2,10,13
13:22,24 14:7,8,18
15:2,17 16:16 31:20
45:22 76:6,7,16,18
76:20 77:2,2,13,13
77:23 79:25 80:1,10
80:23 81:13,16,20
81:24 82:18,19,22
89:5
presidential 82:8
press 14:18 23:22
pressure 26:2 **pretty**
41:1 **previous** 36:4
70:19 81:9
previously 91:16
pre-investigation

10:24 11:1,5,15
12:7,25 15:4 17:1
17:12 19:9 22:14
29:3 76:11,13 77:4
77:5,7,20 78:4
79:15,18 86:7 88:17
88:21 89:8 91:1
96:11
pre-investigative
15:15 16:6 97:21
pre-planned 12:9,13
pre-trial 2:16 **Prime**
12:18,23 13:1,9 **prior**
4:2 29:13,14,24
30:14,15 31:3 32:18
52:2 61:1,9,16
probably 45:5 49:17
55:22 60:23 63:18 72:19
101:13 **problem** 17:14
22:2 **problems** 96:21
procedural 4:13 5:5
11:9 12:21 15:22 16:4
76:12 77:19 80:15 83:21
84:3 85:1,13 88:16 89:1
89:6
procedurally 83:19
procedure 11:16
14:14,20 18:4,19 23:2
36:24 54:11 55:5 59:16
63:7 71:22 76:10 77:18
78:2 79:2 80:6 84:23
proceeding 26:24 27:22
28:12 31:5 33:6 34:15
43:18 47:16 89:5
proceeds 15:10 **process**
4:24 5:7 6:8 8:24 11:9
31:7 55:6 77:10,11 79:5
83:11 85:5 **produce**
51:16 **produced** 1:24
29:21 31:4 50:12,23
64:11 71:15 73:3,3,22
74:18 98:13 **produces**
102:12 **product** 90:1,5
97:14 **products** 97:6
professional 87:25
PROFESSOR 1:9,9
1:22 2:17 83:7,8

<p>84:15 108:10 112:7</p> <p>profit 97:4</p> <p>profits 94:10 97:23</p> <p>100:10 101:14</p> <p>project 49:15 50:4</p> <p>63:24 64:13,17,23</p> <p>65:8 66:15,24 67:6</p> <p>68:1 100:6</p> <p>promoted 91:2</p> <p>promotion 91:10,13</p> <p>proper 95:20</p> <p>properly 14:24 37:6</p> <p>properly 37:11,17</p> <p>Property 2:16</p> <p>proposes 41:17</p> <p>proposition 37:21</p> <p>prosecuting 16:11</p> <p>prosecution 38:9,16</p> <p>46:13 47:2</p> <p>prosecutor 2:13 85:5</p> <p>prosecutor's 2:13,15</p> <p>4:14 78:22 84:1</p> <p>85:2 86:9</p> <p>protection 2:16 2:14</p> <p>protocol 3:2 4:4 6:20</p> <p>7:6 9:1,4 26:1 83:9</p> <p>83:13 84:4,8</p> <p>protocols 4:9,11 5:20</p> <p>7:8,12,17,18</p> <p>provide 46:22 59:10</p> <p>63:11,20 64:9 70:17</p> <p>71:6,10,24 72:3</p> <p>85:7 108:1</p> <p>provided 28:12 58:15</p> <p>59:21 62:6,15 63:23</p> <p>64:7,12,16,19,21</p> <p>65:2,8,10 66:16</p> <p>67:2,5 70:6,8,10</p> <p>71:4 72:11,14,16</p> <p>73:10,18,19 99:14</p> <p>providing 2:12 64:9</p> <p>66:1,6</p> <p>provisions 83:22</p> <p>pull 58:2</p> <p>pulled 78:13</p> <p>purpose 75:5</p> <p>pursuant 59:21 60:14</p> <p>94:21</p> <p>pursue 19:12 23:5</p> <p>put 9:21 20:6 45:10</p> <p>57:25 59:5 70:19</p> <p>89:19 95:2 98:22</p> <p>103:1</p> <p>putting 64:5</p>	<p>17:6,10 18:22 19:1</p> <p>19:2,4,18,20,21</p> <p>21:24 22:1,9,10,12</p> <p>22:18,21 23:24 24:1</p> <p>24:4 26:20 27:3,15</p> <p>28:5,10 29:23 30:6</p> <p>32:4 34:8,19 40:16</p> <p>40:21 41:1,1,5 45:1</p> <p>49:12,24,24 51:5</p> <p>54:23 55:2 61:7,8</p> <p>65:25 66:2 68:17,22</p> <p>68:23 70:19,25 72:8</p> <p>73:12 83:17 84:15</p> <p>85:15 89:10 90:2</p> <p>93:6 94:2,14 95:2,7</p> <p>95:23 97:2 98:5,6</p> <p>101:1,12 103:1</p> <p>107:6,8 110:3</p> <p>questioning 11:17</p> <p>questions 2:21 9:16</p> <p>23:23 25:19 59:5,6</p> <p>71:3 74:3,9,21</p> <p>75:24,25 76:1,4</p> <p>83:7 85:14 88:12</p> <p>89:20 90:13 91:22</p> <p>108:3,4,6,11 112:6</p> <p>quite 87:3 95:15</p> <p>106:24</p> <p>quizzed 49:14 50:3</p> <p>quoted 99:4</p> <p>quoting 45:13</p>	<p>106:6</p> <p>reason 3:21 10:25</p> <p>11:4,10 13:3 15:21</p> <p>15:24 24:23</p> <p>reasons 15:23 23:7</p> <p>25:13,15</p> <p>recall 28:24 30:22</p> <p>38:12,13 44:20</p> <p>47:11 50:18 52:5</p> <p>64:14 74:19 75:15</p> <p>75:17 80:2 81:16,24</p> <p>82:24 83:2 84:11</p> <p>85:2,19,25 86:5</p> <p>100:6 105:4,12,13</p> <p>106:16</p> <p>recalling 75:5</p> <p>receipt 52:16</p> <p>receive 59:23,25 77:18</p> <p>79:14 80:9</p> <p>received 4:13 5:2 9:1</p> <p>9:3,12 15:9 17:2</p> <p>19:7 44:10 49:20,25</p> <p>54:12,22 59:5 60:18</p> <p>60:20 76:11 78:10</p> <p>79:15,19,21 81:10</p> <p>81:21,23 82:21 89:4</p> <p>89:21 90:3 95:10</p> <p>102:1,4</p> <p>receiving 52:5</p> <p>recently 18:3</p> <p>recollection 38:11</p> <p>75:1,7 78:5 105:11</p> <p>recollections 75:3</p> <p>reconfirm 14:1</p> <p>reconsidered 51:9</p> <p>53:13</p> <p>record 11:3 20:13</p> <p>32:17 39:18 44:18</p> <p>51:23 65:21 85:25</p> <p>record's 65:7</p> <p>red 93:2,4</p> <p>redrafted 3:22 8:18</p> <p>refer 4:4 9:23 10:2,25</p> <p>21:7 23:1 26:3 34:8</p> <p>51:21 54:16 71:2</p> <p>96:25 106:17</p> <p>reference 88:19 94:3</p> <p>referenced 16:22</p> <p>21:21 39:15</p> <p>references 106:3</p> <p>referencing 55:4</p> <p>referred 73:13 97:18</p> <p>referring 10:3 31:16</p> <p>44:19</p> <p>refers 9:9 47:22 97:11</p> <p>refresh 38:10</p> <p>refuse 25:13</p> <p>regard 56:13 57:18</p> <p>79:14 83:10 84:17</p> <p>regarding 3:1 12:3</p> <p>28:19 61:9 73:4</p> <p>84:12,13 85:21 86:2</p> <p>93:9</p> <p>regime 40:6</p> <p>REGINALD 1:18</p> <p>region 33:24 41:19</p> <p>88:7 91:3,9</p> <p>Regional 1:22</p>	<p>register 16:11 76:8</p> <p>77:21</p> <p>registered 13:5 76:8</p> <p>77:4,14,20 78:20</p> <p>79:22</p> <p>registration 77:17</p> <p>78:2</p> <p>registry 50:15</p> <p>Regulation 27:17,22</p> <p>28:7 94:21 95:11</p> <p>96:16</p> <p>regulations 84:22</p> <p>reissue 24:10,17</p> <p>reissued 52:3</p> <p>reiterate 80:12 83:18</p> <p>104:4</p> <p>related 59:11 97:15</p> <p>relates 59:17 64:4</p> <p>90:8</p> <p>relating 84:22 89:10</p> <p>relatively 57:19 109:8</p> <p>released 74:8</p> <p>relevance 72:25</p> <p>relevant 66:2,5 70:21</p> <p>96:19 101:7</p> <p>relied 23:25 57:8</p> <p>relieved 86:15</p> <p>remain 4:23</p> <p>remark 93:12</p> <p>remarks 5:6,10,12,13</p> <p>5:15,15 8:24 9:7</p> <p>remember 4:15 15:6</p> <p>29:7 38:23 39:2</p> <p>42:1 66:8 78:14</p> <p>110:8</p> <p>render 42:9 62:21</p> <p>76:11</p> <p>rendered 22:25 60:15</p> <p>60:22</p> <p>repeat 11:25 22:10</p> <p>75:6</p> <p>rephrase 101:13</p> <p>reply 40:24 41:14</p> <p>61:11 94:21 95:10</p> <p>report 14:18 25:23</p> <p>27:7 30:12 60:10</p> <p>61:1,10,17 64:22</p> <p>77:24 78:10,10 79:6</p> <p>79:14,15 92:13,21</p> <p>92:25 93:8,22</p> <p>102:12,17,22</p> <p>103:15 106:18</p> <p>107:9</p> <p>Reporter 1:25</p> <p>represent 65:21</p> <p>representative 34:12</p> <p>34:20 35:3,14</p> <p>representatives 72:20</p> <p>representing 103:5</p> <p>Republic 1:16 2:9</p> <p>13:17 15:9 16:10</p> <p>39:22 40:13 89:22</p> <p>92:7</p> <p>request 13:4 25:23</p> <p>26:4 33:4 39:14</p> <p>45:19 48:6 59:23</p> <p>60:2 63:3,6 74:6,19</p> <p>74:24 80:10 81:12</p>	<p>83:15 97:18</p> <p>requested 11:22 12:2</p> <p>39:9 41:10 66:11</p> <p>requesting 45:18,22</p> <p>58:25</p> <p>requests 59:25 79:17</p> <p>required 27:25 28:14</p> <p>66:12</p> <p>requirements 71:21</p> <p>research 39:5 42:20</p> <p>43:2 44:3,4,5 54:13</p> <p>reserves 75:17</p> <p>resolution 20:11,15,20</p> <p>20:24 21:3,22 22:17</p> <p>22:20,25 85:7 91:25</p> <p>resolutions 31:20</p> <p>Resources 24:9 41:12</p> <p>42:12,14 46:2 47:5</p> <p>47:17 48:25 49:8</p> <p>50:1,16 51:7</p> <p>respect 5:7 8:24 16:5</p> <p>23:20 25:16 42:3</p> <p>46:22 59:6 61:12,21</p> <p>62:1,4 66:17 74:11</p> <p>96:22</p> <p>respective 27:11 36:2</p> <p>37:25 88:21</p> <p>responded 47:6</p> <p>respondent 1:16,23</p> <p>2:6 1:17 29:22 30:5</p> <p>31:4 50:23 51:24</p> <p>52:16 56:20,22,23</p> <p>57:6,12 87:16</p> <p>109:13</p> <p>respondent's 56:17</p> <p>74:5</p> <p>response 13:1 15:1</p> <p>16:16 28:19 33:4</p> <p>35:23 41:4 47:14</p> <p>52:22 102:1,4</p> <p>responsibility 58:11</p> <p>responsible 35:21</p> <p>53:7,9 88:7</p> <p>result 12:25 16:1</p> <p>25:23 54:13 97:5</p> <p>98:24</p> <p>resulted 29:10</p> <p>results 13:7 17:15,16</p> <p>25:4 30:19 31:7</p> <p>43:15 80:18 103:3</p> <p>resume 86:25</p> <p>return 82:1</p> <p>returned 75:11,12</p> <p>revealed 77:25</p> <p>review 25:4 28:23</p> <p>29:2,10,17,24 30:3</p> <p>30:3,7,20,25 31:1,7</p> <p>42:21 43:15 53:23</p> <p>54:7,11 55:12 58:22</p> <p>59:2,4,5,20 60:1</p> <p>73:23 78:21 81:3</p> <p>88:23</p> <p>reviewed 30:14 41:13</p> <p>reviewing 17:6</p> <p>reviews 29:5,7 30:8</p> <p>86:11 88:25</p> <p>revision 49:24</p> <p>revoke 45:18,23</p>	<p>re-direct 74:5,6 98:3</p> <p>98:10 108:5</p> <p>right 5:3 21:1 24:18</p> <p>26:19 30:2,9 34:16</p> <p>35:13,19 37:3 40:16</p> <p>43:4 44:12 46:18</p> <p>49:16,23 50:10,14</p> <p>69:11 71:23 72:15</p> <p>72:23 73:22 75:17</p> <p>84:24 91:8,9 93:17</p> <p>93:22 94:7,12</p> <p>101:17 102:3,5,10</p> <p>102:15,16 104:3,14</p> <p>104:15 107:4</p> <p>109:14</p> <p>rights 2:16 2:13 83:23</p> <p>84:6</p> <p>RMB 69:16</p> <p>ROEBUCK 1:18</p> <p>108:18</p> <p>room 26:6,8,16 110:19</p> <p>110:20,22</p> <p>Rose 1:21 2:8,8</p> <p>rule 75:15 77:22 78:17</p> <p>Ruled 92:4</p> <p>rules 1:1 55:5 57:14</p> <p>59:16 65:15 76:22</p> <p>83:21 84:20,21 85:1</p> <p>run 102:10 103:22</p> <p>Russian 1:6,7,11 4:6</p> <p>20:14 22:7 38:22,24</p> <p>52:16 67:9,23 89:16</p> <p>90:11 92:16,19</p> <p>Russian-English 2:23</p> <p>2:23</p> <p>R-246 106:18</p>
<p>QC 1:10</p> <p>qualification 29:8</p> <p>qualifications 19:13</p> <p>37:19</p> <p>qualified 19:16,21,23</p> <p>27:24 36:25</p> <p>qualifying 25:12</p> <p>quarter 62:13</p> <p>question 2:25 3:6,10</p> <p>3:15 10:9,10 11:3,8</p> <p>11:18,20,25 12:1</p> <p>13:25 14:4 16:14</p>	<p>R</p> <p>R 1:10</p> <p>RAF 1:14</p> <p>raised 74:12 88:12</p> <p>89:11 90:8</p> <p>Rakhimov 1:3,5,9,21</p> <p>2:18 4:4,10 9:21,22</p> <p>13:19 16:20 52:22</p> <p>54:19 58:4 61:16</p> <p>74:9,15,25 76:5</p> <p>83:8 85:19 86:15</p> <p>104:14 105:2</p> <p>107:16,16,19 112:3</p> <p>Rakhimov's 75:7</p> <p>RAMSDEN 1:21</p> <p>rather 43:11 98:12</p> <p>raw 59:12 64:20 90:5</p> <p>reach 53:1,11</p> <p>reached 23:18 33:8</p> <p>35:22 38:8 88:3</p> <p>103:17</p> <p>reaching 72:7</p> <p>read 1:9,14 2:22 5:16</p> <p>5:18 8:25 9:10 17:8</p> <p>37:9 38:3 40:2,22</p> <p>48:3 51:15 54:1</p> <p>70:22 71:1 87:9</p> <p>89:14,17 93:12</p> <p>104:7</p> <p>reading 2:23 39:18</p> <p>45:12 47:4 68:13</p> <p>90:7</p> <p>ready 17:9 44:25</p> <p>real 100:4</p> <p>really 32:4 82:12</p>	<p>O</p> <p>regard 56:13 57:18</p> <p>79:14 83:10 84:17</p> <p>regarding 3:1 12:3</p> <p>28:19 61:9 73:4</p> <p>84:12,13 85:21 86:2</p> <p>93:9</p> <p>regime 40:6</p> <p>REGINALD 1:18</p> <p>region 33:24 41:19</p> <p>88:7 91:3,9</p> <p>Regional 1:22</p>	<p>S</p> <p>SA 1:13 2:5</p> <p>Safety 42:20 43:2,3</p> <p>44:5</p> <p>SAGATOV 2:13</p> <p>sale 94:1 97:5,9,11</p> <p>sales 89:25 90:11</p> <p>97:14,24 98:11</p> <p>same 7:19 13:14,21</p> <p>14:8,19,20,22 20:5</p> <p>20:6 24:16 25:14</p> <p>51:19 54:17 74:17</p> <p>75:3 78:1 84:15</p> <p>sanction 4:14</p> <p>sanctions 15:11</p> <p>SAURBEK 1:21</p> <p>saw 95:13</p> <p>saying 8:24 9:3 21:13</p> <p>39:6 49:19 54:17</p> <p>says 5:12,14 8:15 23:2</p> <p>40:15 48:5 62:11</p> <p>63:9 66:20 67:16</p> <p>69:15,19 93:20</p> <p>94:20 105:20</p> <p>106:19</p> <p>scheduled 109:14</p> <p>scientific 39:5 42:20</p> <p>44:3,5 53:23 54:14</p> <p>scope 13:21 18:2</p> <p>search 2:18 3:2,7,8,11</p> <p>3:12,13,16 4:5,9,10</p>		

4:12,16,22,24 5:1,7 5:25 6:14,14,15,16 7:14,24,25 8:9,19 8:25 17:16,17,21 74:1,10,11,17 84:4 84:13 searched 6:7 84:7 searching 6:3 second 3:4 5:13 6:5,6 6:7 7:5 8:1 16:22 17:5,8,18 21:2,8,9 22:13 24:14 65:4 72:13 73:16 84:15 88:2 90:2 92:16 99:21 104:6 109:16 Secondly 33:3 secretary 2:9,20 47:18 48:18 49:14 56:3,7 56:14 section 67:8,15 68:3 securing 2:13 security 2:12 5:9 6:18 7:3,3 8:7 see 3:10,13 4:25 5:8 12:10,10,11 20:13 25:11 28:18 32:24 35:3,6,16 37:21 40:23 41:11,14,20 42:13,24 43:3,20,21 44:1 45:6 46:6,19 47:9,21,24 48:3,12 50:19 52:8 55:10 62:16 65:5 67:21 68:9,25 69:5,9,11 69:12,15,17,22 73:13,17 76:17 78:25 79:1 80:21 81:2 92:11 93:3 102:6 105:6,23 106:2,3,25 110:23 seems 64:25 73:22 90:9 105:3 seen 30:5 33:1,2 40:22 41:21 segment 36:16 38:9 50:2 select 66:19 selected 66:10 selling 101:23 send 11:23 12:2 senior 2:13 2:4 89:3 90:20,22 sense 95:9 sent 13:23 14:17 44:14 91:25 100:15 sentence 12:6 13:12 14:22 21:9 22:8 39:19 sentences 3:20 104:8 separate 24:11 31:9 31:11 34:5 101:19 separately 39:4 100:24 September 81:24 sequence 77:16 91:22 SERGEI 1:9 Sergey 83:5 108:9 serious 7:16	served 10:6 11:23 15:17 serves 14:23 service 5:9 7:3 99:14 services 2:10 set 101:6 110:4 several 18:13 48:5 72:8 85:19 91:21 severe 87:14 sheepishly 50:5 short 4:1 55:17 56:9 109:17 shortly 49:20 show 35:17 36:1 41:13 49:9 65:19 side 6:12,23 7:6 74:5 74:22 85:14 sign 3:15 6:25 signatories 43:13 signature 5:18 6:19,20 6:21 7:5,9 9:2,6,13 35:11 58:7 83:10 106:25 signed 3:2,18,25 4:2,9 4:11 6:23 7:6,17,18 8:4,5,16,16,18,21 8:22,23,25 9:5 20:17 26:3 44:7 48:4 74:11,18 92:25 93:8,22 106:22 significant 54:9 91:12 signs 5:13 35:18 SILVERMAN 2:4 similar 25:5 31:21 61:21 82:25 similarly 38:8 SIMON 1:21 simple 10:10 19:2 23:24 91:11 94:15 100:13 simplified 18:4 simply 17:7 19:4 22:18 28:10 75:6 110:11 SIMPSON 2:20 since 18:3 20:1 51:15 66:8 91:2 96:11 100:21 104:20 105:16 sir 1:5 10:9 11:17,21 12:12,14,24 14:5 15:16 16:14 17:6,8 17:10 19:4,18 20:12 20:15 21:25 22:2,12 25:18 26:12 27:21 28:2,5,11 29:12 35:25 37:3 39:8 41:22 43:1 44:18 48:15 51:5 55:2 66:21 67:4 68:13,17 70:1 80:13 93:7 95:8 96:5 99:12,21 104:22 105:11 106:8 107:13 sitting 26:6,15 110:22 situated 44:6 100:8 Situation 40:12,18 41:18	situations 32:21,22 33:7,24 34:2,5,12 34:16,21 35:9 41:7 42:19 43:13,25 44:2 44:12,21 45:2,23 49:4 71:7 72:1 82:24 six 48:6 sixth 25:10 46:25 Slightly 86:25 small 2:14 6:1 Smith 1:18 9:20 18:21 18:24 19:2 22:1,10 22:12 26:11 52:11 52:14,21 55:17,19 56:5 57:24 63:17 74:2,23 75:11,13 85:16,18 86:8,13 109:6,10,19 110:12 110:18 112:5,8 SN 67:19 68:16 69:21 SNIP 65:2 SNIPs 65:11,13,13,22 66:7,14 67:1 68:8 70:7,10,15,16,20,20 73:11,13,14,18,19 73:20,25 socio-economic 2:13 2:15 sold 99:8 sole 10:6,11,18 solicited 41:2 solution 57:5,20 solutions 36:24 solve 40:8 some 2:21 14:14 15:10 23:20 40:5 48:7,7,8 50:13 51:19 55:18 57:21 67:24 77:24 77:25 79:6 81:20 82:3,8 83:1 88:12 88:13 93:12 99:8 104:11 somebody 77:12 someone 23:5 53:23 81:6 103:5 someone's 84:6 something 15:11 26:4 37:1 45:9 48:12 64:11 84:14 92:17 93:20 110:6 sometime 23:18 106:14 somewhat 43:11 50:5 somewhere 75:15 sorry 6:13 10:15 11:8 11:25 13:25 15:20 19:18,21 22:2 27:13 35:7 37:13 52:11 61:25 63:13 68:13 68:20 69:3 93:3 107:5 109:9 sort 79:6 80:11 south 50:8 Spalding 1:19 2:4,4 speak 16:17 31:18 speaking 6:4 15:7 20:1 21:14 36:20 42:25	48:13 54:8 special 2:10 5:14 24:11 25:2 specialised 53:23 specialist 54:14 specialty 18:8 specific 29:12,23 51:21,21 61:797:18 104:23 specifically 24:6 26:17 38:15 40:11 42:9 45:4 67:7 94:4 specifications 31:16 31:21 48:11 72:18 specified 48:10 spelt 9:14 spend 110:25 sphere 2:13,15 spoke 39:2 staff 4:21 5:23 stage 10:24 15:15 17:18,20,23 31:10 55:18 86:7 stages 11:15 17:17 102:19 stamp 79:22 standard 14:14 standards 6:2 start 4:16 5:25 7:24 18:3,9 72:10 78:18 78:25 94:25 started 3:8 6:4 7:25 24:2 78:16 96:18,23 starting 2:19 95:14 96:20 103:7 state 2:16 2:12 6:2 13:12 14:6 16:8 18:17,18 21:2 22:12 26:5 29:19 35:6,8 44:4 46:21 94:23 stated 3:5 8:14 24:21 24:23 25:1 27:15 47:18 71:16 statement 9:22 10:3 12:5 13:11 14:6,21 16:7,7,22 20:21,24 21:2,8 22:13 49:6 49:10 50:12,13 52:1 52:12 62:7,7 74:14 87:4 104:6 105:3,8 105:10,22 statements 1:21 10:1 87:20 states 21:9 39:18 40:7 Stati 1:12,13 12:3 15:7 15:9 station 8:17 59:13 stay 8:13 stayed 106:8 steel 67:19,20 STEIN 1:21 Stejar 2:20,25 4:15,17 5:9,13,17 7:7 8:6,7 8:14,23 9:14,14 74:13,19,24 75:6,10 step 102:9 still 15:5 22:6 57:3 102:21	Stockholm 1:2 stop 18:14 stopped 18:20 storage 100:3 straight 7:23 straightforward 41:1 strange 84:14 strict 11:15 structure 91:15,17 100:7 studied 23:19 25:8,10 31:14,22 32:3,6,14 72:24 73:4 study 28:16 54:13 70:10 82:4 studying 78:16 subject 13:13 36:16 46:12 47:2 48:16 64:17 67:13 68:6 71:8,12 subject-matter 98:18 submit 74:6 92:5 submitted 1:21 26:24 43:8 64:2 87:20 90:8 SUBOCHEVA 1:19 subordinated 34:4 subsection 92:4 subsequent 14:16 52:15 89:25 90:11 97:5,13,24 subsequently 11:13 88:23 subsidiary 44:3 subsoil 32:9,9 92:8 substance 107:5 substantial 91:10,12 105:25 substantive 72:5 sufficient 10:23 16:2 21:4,10,13,14,15,21 22:15,24 23:3 62:23 62:25 63:5,5 66:12 73:7 94:25 96:13 suggest 41:5 suggestion 20:21,24 suggests 53:21 superior 49:16 50:6 supervised 81:19 supervises 86:7 Supervision 2:11,12 2:14,14 supervisor 83:25 supervisory 84:9 85:11 Support 2:10 supported 22:19 supposed 24:18 supposedly 100:20 101:3 sure 36:5 40:3 52:12 56:12 74:23 75:5 77:19 78:3 82:17 87:3 98:2 101:12 103:1 surname 87:7 suspicious 20:4,8 SVEN 1:21	system 2:8 T tab 20:12 32:16 34:7 34:24 36:3 38:10 39:7,17 42:17 44:17 44:22 45:4,13 46:4 46:6 47:10,12 60:9 64:15,24 65:6,6 67:4,8,22,23 73:12 91:24 92:12 93:2 94:3 97:1 102:2,7 102:14 105:21 106:17 tabbed 93:3 tabs 34:9 take 1:6 4:6 6:20 8:14 9:6 14:16 15:3 16:4 17:24 44:9 49:11,24 57:1,16 89:11,15 97:22 102:9 103:14 107:20,20 110:1,7 takes 12:21 75:14 89:1 taking 13:7 33:16 57:3 69:10 93:6 talk 29:20 30:11 44:11 49:16 talked 65:7 talking 29:13 34:10 35:4 51:24 68:20 69:8 105:23 talks 105:9 task 58:16 tax 27:11,13 89:21 93:25 94:18 95:3,24 97:3 98:13 100:9,13 100:19,22 101:2,4,8 101:14,18 102:1,4 103:4 TCHEKHOV 2:23 team 6:6,9,11,11,15 teams 6:2,9 technical 29:9 31:16 31:21 43:2,11 44:5 48:11 49:14 50:4 58:6,10,17,21,22 59:1,6 70:12 72:18 technically 110:1,9 technological 67:20 tell 9:9 29:4 52:23 55:22 56:19 76:5 77:12 78:7 81:9 83:8 87:11 100:11 Temirhanov 5:10,12 6:18,24 7:4 8:7 TERRA 1:14 territorial 18:16 territory 13:16 tested 103:20 TESTEMIROVICH 1:3 112:3 testified 26:17 32:6 62:7 66:21 104:25 106:10 testify 1:5,7 testifying 109:16 testimonies 28:16 75:20
---	---	--	--	---	--

testimony 8:15 13:18
17:5 20:9 28:3,25
29:16 30:16 55:24
62:10 72:4 74:13,25
75:6 86:14 87:11
89:13 103:18 104:10
105:2 108:13,24 text
4:8 45:24 55:13
67:24 68:9 93:13
thank 1:18 2:17 9:17
11:3 19:10,17,25
25:18 38:4 52:20
55:21 57:24 74:3,4
75:22,23 83:4,17
86:13,15,18 87:15
87:17 88:9 89:9
108:4,6,8,12,13,14
111:1
their 5:2,4,10,23 37:5
44:15 45:10,10 52:2
72:7,12,18 73:4
83:15 84:10 97:9
99:19 100:12,17,23
101:20,23 109:8
themselves 11:2
72:19
80:24 thing 5:24 8:22
13:3 24:13 78:17 80:22
109:11 things 43:8
72:22 79:4 think 1:10
5:17 11:8 18:21 24:3
49:23 51:4 52:15,23
57:7 65:18 66:8,12
68:21 73:7 75:1,3 79:3
92:3,17 93:5 96:5
108:23 109:22 110:20
third 13:12 18:15 24:20
45:13 49:5 50:12,13
51:25 52:12 95:2
thoroughly 74:24
though 102:18 thought
14:4 19:2
55:20 67:24 109:4
three 1:21 16:4 18:6
29:6 30:21 43:13 60:23
64:7 72:6 81:4 93:24
102:22 103:2 104:8
107:2 108:24 through
52:24 68:22 74:12 76:23
89:25 90:4,5 93:6 94:2
95:5,25 96:8,19 97:6
99:15 101:21 103:24
throughout 26:6
106:7 time 3:23
4:21 7:1,21 19:12
23:14,22 24:5
25:14,25 26:12,16
26:20 28:20 29:14
33:13 40:23 41:20
41:21 55:19 57:13
61:9 65:22 71:14
75:10,16 78:13
86:16 89:3 91:2
93:1 95:2,24 96:18
101:10 102:18
104:19 105:16
109:3,6,16 110:2,2
110:6 times 26:8

timing
56:1,4,12,17
57:17 TIRADO 1:21
TLENCHIEV 2:11
TNG 2:19 6:1 8:5 10:7
10:13,17 11:6 13:20
28:24 29:6 30:4,16
30:20,20,22 31:8,11
42:3 46:8 47:25 48:1,7
51:12 85:22 86:2 93:9
96:21 100:24 104:13
TNG's 30:11,12 31:1
104:11 today 29:1
33:1 56:18 74:9 84:18
86:18 87:2 108:17,19,20
108:22 together 69:17
76:12 78:14 105:13
108:2 109:3 told 49:15
tool 98:23 99:4 top 68:3
69:7 80:2,4 82:18
TRAIDING 1:14
TRANS 1:14
transcript 1:24 2:22
2:23 22:3,4,5 92:21
transferring 33:10
translated 22:9 52:15
translation 19:1 21:20
22:6 63:19 69:2 80:12
90:7,10 97:16
transmitted 76:20
transport 99:13
transportation 37:23
89:25 90:5 94:1 97:5,13
98:19 99:10 99:15
transporting 37:24
transshipment 99:10
treatment 37:23 59:12
Trevor 1:24 Tribunal
2:19,20 20:23 74:7,20
75:4 75:19 81:9 90:9
tried 24:9,16 57:19 true
4:24 54:19 55:2,7
104:18 trunk
46:24 52:25
53:19 71:17 94:23
truth 87:12,12 try
24:5 88:15 101:1
trying 76:25 90:24
92:16 Turganbayev
86:23 87:2,5,7,20 88:10
90:17 104:10 106:20
112:9
turn 41:17 55:15
90:14 92:12 105:21
105:24 turned 107:1
turns 62:22 64:3
65:12
TUYAKBAYEV 2:10
two 3:3,4 4:9 5:20 6:2
6:9,17 17:17 34:5 39:3
44:13 48:1,1 50:11,20
51:6 57:4 60:21 64:12
65:1,8 65:11 66:25 68:8
70:5,7 73:13,18,19
74:16 79:4 85:9 87:5,20
88:1 94:5 102:18 103:22
108:24,25 109:7,10

109:12 type 18:16 71:20
types 38:1
U
ultimate 52:2 71:25
ultimately 36:16 40:6
52:25 53:11 75:4
UN 15:11
unambiguously 96:9
under 1:1 5:5 11:9
12:20 14:13 15:11
33:25 34:1 45:13,17
55:5 57:7 58:6,10
58:19 59:16 63:14
67:22,23 89:17 92:4
94:4 97:1 undergo
36:24 understand
1:12,13 9:11 13:25
22:21 30:11 32:9,11
33:3 34:11,19 36:14
43:10 53:25 59:18
65:3 69:24 74:23 77:8
78:3 79:3 82:15 86:18
97:13 105:1 107:5
108:16 110:3
understanding 48:4
50:24 76:14 109:10
110:13 understood
33:13 34:20 58:24
82:4 90:19 101:12
undertake 82:10
unfortunately 58:1
67:9
unit 89:4 90:21,23
units 88:20
University 2:2
unlicensed 79:18
89:24
90:4 unlike
37:16 until
53:7 86:21
88:3
111:3 unusual
80:8,20,21 use 24:22
25:2 32:10 92:8
93:10,17 99:6 103:10
used 15:10 26:2 31:7
36:17 49:15 50:5
56:16,18,21,23 74:1
98:17,18 99:23 useful
88:13 using 48:1
V
v 1:3,15,22
VALERYA 1:18
VAT 82:1
verification 45:17
verified 74:15 verify
78:19 85:5,8,11
verifying 103:10
version 4:7 89:16
92:20 95:18 97:2
103:21 104:5 versions
96:10 103:21 very
9:17 18:3 23:24 29:12
40:17 44:7 50:19
53:25 57:11 68:21
74:3,4 86:15 87:15
97:16 102:8 104:21

107:14 108:4,12
VICKI 2:4 video
108:25 109:7,11
109:15 110:8
video-conference
110:19,20
video-conferencing
110:1,14 view 42:9
57:15 75:7
95:19 views 41:2
VII 93:13 village
64:20 violation 84:17
violations 8:10
visiting 100:14 104:19
105:13 volume
62:25 voluminous
95:15 Voronin
10:5,13,19 11:13,22
12:2 13:4 13:22 14:13
15:6 16:2 76:6 77:2,13
80:1 82:19 89:5
Voronin's 11:6 13:13
14:7 15:2,17 16:16
77:23 79:20 VSN
67:18 68:11,16 69:20
W
waiting 22:6 want
13:18 28:18 29:12 30:11
56:12 97:16 104:15
109:1 109:4 110:2,4,25
wanted 66:23 83:17
91:14 98:9 wasn't
87:3 waste 71:14
watched 8:9 way
10:21 62:13 64:3
74:17 75:9 81:3 94:15
99:8
ways 101:24 week 52:4
74:2 weekend
110:25 weigh 75:4
welcome 1:5 98:10
well 9:23 10:2 19:23
22:5 23:17 27:9 28:3
33:16 35:8,15 35:24
37:24 39:7 40:25
41:21 44:1 48:13
51:10 53:15 54:19
61:23 62:6 65:17
66:15 70:19 72:8
75:14 76:22 77:3
78:8 80:14 82:12
84:2 86:4 97:11 98:2
99:1 101:4 105:16
107:1 108:23 wells
61:22 went 6:5
52:24 were
3:6,9,14,18,24
3:24,25 4:1,2,11,21
5:1,1,4,9,11 7:14,17
7:18 8:4,5,15,16,17
8:19,20,21,22 9:4
10:23 11:14,15,17
12:8 13:7 14:2 15:1
15:14,18,19 19:21
23:7,8 24:25 25:4,5
25:13,15 26:15 29:5
30:19 31:7,9 51:23
53:18 55:25 61:14

62:14,18,20,22,23
63:2 64:2,12,12
65:11 66:6 70:5,8
70:10,20 71:4,15,17
72:14,16,22 73:11
73:18,19,20,24
74:12,13,14,18,18
78:13,20 79:9 81:18
81:19 82:25 84:11
85:20 86:1,4,9,10
88:12 89:2 90:20
95:21 98:23 99:17
100:21 103:10,12
106:9,20,22 107:1
we'll 34:9 44:9
52:16
55:20 109:22 we're
91:19 102:21 we've
30:5 44:12 65:7
70:12 106:7
whichever 10:2
while 17:6 30:21
39:17 50:23 107:24
whole 1:24 100:7 wish
10:25 withdraw 44:22
45:2
49:8 50:10
withdrawal 50:22
52:2
withdrawn 44:16 49:5
50:17 51:16 108:23
withdraws 50:20
withdrew 50:9,11
witness 1:7,12,15,21
2:20 4:6 9:22,25 10:3
12:5 13:11
14:6 16:7,22 18:21
19:19 21:2,8,24
22:7,8,13 24:3 27:4
27:21 49:5,10 50:12
50:13 51:25 52:12
55:23 57:25 62:6
68:13 74:2,7,14
75:16 86:18 87:2,4
87:7,11,20 100:1
104:6 105:3 108:14
108:19 109:16
110:13 witnessed
6:17 witnesses
3:1,4,5,7,9
3:10,12,13,15,23
4:3 5:1 7:8,9,14
8:18 9:8 27:9 75:2
83:11 108:24,24
109:1,7,11,12
witness-conferenci
ng
74:20 word 54:1,2
73:15 wording 5:3
55:13 words 12:7
64:16
88:15 91:11 work
2:2 34:17 42:8 43:22
59:18 81:14 88:20
105:18 106:15 107:17
108:2 worked 61:20
88:2 working
34:13,22,24 35:3,5

47:20 49:1 61:5
64:12,17,19 65:8
66:16,24 67:6 95:12
wouldn't 98:20 99:10
write 22:22 42:11
written 60:15,22
85:20 86:1 wrong
57:2 75:8 90:10 wrote
49:13,21
www.thecourtrepor...
1:25
Y
year 91:6 95:15 years
88:2 YERLAN 2:10
yesterday 56:1,15
74:13 89:11,12 90:9
Z
Z 7:4 ZA 6:24
ZENKIN 1:22
ZHANIBEK 1:21
ZHENNIA 2:4
0
04.15 8:2
1
1 54:10 56:24 89:17
91:24 112:3,4
1-kilometre 100:3
1.07 83:6

<p>D M</p> <p>1.12 85:17 1.13 86:20 10 106:17 10th 91:6 105:24 106:4,19 10,30 109:18 109 58:3,4 85:3 11 34:9 64:15 67:4,8 67:22,23,25 105:21 11th 60:18,21 92:23 11.27 56:8 11.45 55:21 110 85:3 112 1:4 116/2010 1:3 12 34:7,9,24 64:24 12.14 56:10 12.53 76:3 124 33:7 13 2:24 39:7,17 13th 52:4 60:11 102:23 103:16 14 2:23 20:12 14th 92:25 93:7,22 96:24 15 47:10,12 88:2 15th 20:15 22:25 23:19 29:13 30:2,14</p>	<p>46:8 47:7,14 50:17 52:4 58:6,14 60:11 74:10 104:3,18,19 104:22 105:4,15,24 106:4 107:11 2012 1:6 1:1 111:4 209 21:17 21.50 8:2 240 54:10,16 27 56:20 28th 92:1 102:13,16 29 56:24 3 3 2:23 44:17 57:10 92:4 3.12 108:15 3.15 111:2 3.3 105:22 3.4 49:6,11,19 3.5 106:3 30th 50:18,25 51:10 32 54:10 34 2:23 35 2:24 36 56:25 57:11 4</p>	<p>43:12111:4 83 54:17 59:17 112:7 85 112:8 86 112:9 87 112:11 9 9 56:23 57:12 102:14 112:5 9th 37:4 58:6,14 60:17 9.30 109:15 110:11,25 111:3 9.35 1:2 9.36 1:19 9.54 9:19 90 112:12</p>
<p>31:3 32:19 16 67:25 17th 93:24 94:7,9 95:4 99:16 177 21:17 18 46:4,6 56:22 183 16:9 89:5 19th 32:18 89:23 102:2, 5 190 99:3 2 2 10:3 12:6 13:11 14:7 16:8 32:16 44:22 45:4 56:25 89:18 90:10 94:4,4 96:25 97:1 2.05.06-85 65:4 2.1 46:9 2.15 86:17,21 2.2 16:23 17:3 21:8 2.23 86:22 2.24 87:1 8 2.30 90:15 2.38 68:16 2.38-85 67:18 2.38=85 69:20 20th 102:8 2007 53:7 2008 10:17 13:20 18:5 20:15 29:13 30:14 31:3 32:18,19 39:21 41:15 50:18,25 81:10 89:23 90:20 92:1,25 93:7,22,24 94:7 95:4 96:20</p>	<p>102:8 103:7,22 104:14 2009 2:20 8:3 9:13 37:4 42:18 43:12 4 38:10 51:25 52:11 56:20 59:8 63:14 92:12 4th 47:7,14 50:17 4.3.5 67:8 68:3,23 5 5 1:6 36:3 39:21 56:20 56:20,23 5th 1:6 1:1 41:15,24 46:8 527 68:16 527-80 67:19 69:21 53 67:25 6 6 42:17 57:12 94:3 97:1 6th 2:20 7:25 8:2 6-22/10723 39:20 41:24 6.3 104:7 64 12:20 7 7 60:9 65:6,6 73:12 102:2 7th 7:22 8:1,3,3,23 9:4 9:5 73 67:8 74 67:8,23,25 68:3,25 69:1,4,5,5,9,10 75016 1:5 76 68:2 112:6 8 8 102:7</p>	

STATI et al -v- REPUBLIC OF
KAZAKHSTAN

Day 5 - Hearing on Jurisdiction and the
Merits SCC Arbitration V (116/2010)

Friday, 5th October 2012