

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 6 Monday, 8th 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 Claire Hill for Trevor McGowan  
The Court Reporter Ltd [www.thecourtreporter](http://www.thecourtreporter.eu) . eu  
ALSO APPEARING

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FOR RESPONDENT

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MARAT BEKETAYEV, Secretary of the Ministry of Justice and Deputy  
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OLCOTT, Carnegie Endowment for International Peace

FOR THE TRIBUNAL

KATHERINE SIMPSON, Secretary to the Tribunal

INTERPRETERS

ALEXANDRE TCHEKHOV, Russian-English Interpreter

NATALY HOLM, Russian-English Interpreter

<p>09:24 1 Monday, 8th October 2012</p> <p>2 (9.30 am)</p> <p>3 DR SEONG HOON KIM (called)</p> <p>4 (Via video conference)</p> <p>5 (Evidence interpreted)</p> <p>6 THE CHAIRMAN: Everybody is here who should be here.</p> <p>7 I resume the hearing. I would suggest to counsel that</p> <p>8 we have a couple of procedural matters, I know, but</p> <p>9 I would suggest we do this video conference first, not</p> <p>10 to interrupt things in that connection, and then we can</p> <p>11 discuss whatever procedural matters we have. Is that</p> <p>12 okay? Okay.</p> <p>13 Okay, I welcome Dr Kim in Korea. My name is</p> <p>14 Karl Bocksteigel, I am the Chairman of the Tribunal. As</p> <p>15 you know, we are here in a hearing of which you know the</p> <p>16 details, which I do not have to repeat.</p> <p>17 I will read out to you a declaration in English,</p> <p>18 which I would like the interpreter to interpret into</p> <p>19 Korean so that Mr Kim can hear that, and if he has heard</p> <p>20 it, he can tell us whether he agrees with that. Did the</p> <p>21 interpreter understand what I said?</p> <p>22 THE INTERPRETER: Yes, I did. Can you hear me?</p> <p>23 THE CHAIRMAN: Could you get closer to the microphone? You</p> <p>24 are difficult to hear.</p> <p>25 THE INTERPRETER: Can you hear me now? Can you hear me?</p> <p style="text-align: center;">Page 1</p>	<p>09:34 1 (9.34 am)</p> <p>2 Direct examination by DR NACIMIENTO</p> <p>3 Q. Good afternoon, Dr Kim. First of all, could you please</p> <p>4 identify the people in the room with you?</p> <p>5 A. They are: myself, Seong Hoon Kim, the senior executive</p> <p>6 vice president of Korea National Oil Corporation; and to</p> <p>7 my right is the interpreter; and the other three people</p> <p>8 in this room are the legal counsels.</p> <p>9 Q. Thank you.</p> <p>10 Dr Kim, you have in front of you Exhibit R-41.2. It</p> <p>11 is a letter dated August 12th 2011 from you to</p> <p>12 Mr Safinov of the Ministry of Oil and Gas in Kazakhstan.</p> <p>13 Could you please describe the circumstances how this</p> <p>14 letter was created?</p> <p>15 A. Yes. This letter is in response to a letter sent by</p> <p>16 Mr Safinov to me dated May 27th 2011, and in that letter</p> <p>17 Mr Safinov enquired about the LLP deal involving TNG and</p> <p>18 KPM. He asked me to verify some of the factual</p> <p>19 circumstances in that letter, and I responded to those</p> <p>20 questions.</p> <p>21 Q. Thank you. Could you please describe KNOC's involvement</p> <p>22 in phase 1 of Project Zenith?</p> <p>23 A. Yes. As of phase 1, we received information from the</p> <p>24 investment bank representing Tristan Group, which was</p> <p>25 Renaissance Capital, with regard to the sale of the</p> <p style="text-align: center;">Page 3</p>
<p>09:32 1 This is the interpreter speaking.</p> <p>2 THE CHAIRMAN: Well, I hear you; not very well, but anyway.</p> <p>3 Okay.</p> <p>4 I will read the declaration, and you will be kind</p> <p>5 enough to translate that into Korean. I will read very</p> <p>6 slowly. I am aware --</p> <p>7 THE INTERPRETER: Can I just translate what you just said?</p> <p>8 THE CHAIRMAN: -- that in my testimony --</p> <p>9 MR HAIGH: She asked whether she could translate what you</p> <p>10 just said.</p> <p>11 THE CHAIRMAN: Oh, yes. Please go ahead. (Pause)</p> <p>12 Alright. Can I now read out the declaration? You</p> <p>13 tell us the answers, please. Is it okay to read it out</p> <p>14 now?</p> <p>15 THE WITNESS: Yes.</p> <p>16 THE CHAIRMAN: Okay. The declaration is as follows: I am</p> <p>17 aware that in my testimony I have to tell the truth and</p> <p>18 nothing but the truth. I am also aware that if I do not</p> <p>19 comply with this obligation, I may face severe legal</p> <p>20 consequences. All right, if you kindly translate that.</p> <p>21 THE WITNESS: Yes, I agree.</p> <p>22 THE CHAIRMAN: Thank you very much.</p> <p>23 I will now turn you over to the direct examination</p> <p>24 by the counsel of respondent. Please.</p> <p>25 DR NACIMIENTO: Thank you, Mr Chairman.</p> <p style="text-align: center;">Page 2</p>	<p>09:39 1 assets in question. And at that time we were engaging</p> <p>2 Merrill Lynch as our investment bank adviser, and we</p> <p>3 were getting that information about this from</p> <p>4 Merrill Lynch. And we reviewed the information</p> <p>5 memorandum submitted to us by Renaissance Capital, and</p> <p>6 as part of this one, we submitted the indicative</p> <p>7 proposal dated September 26th 2008.</p> <p>8 But in November 2008, Renaissance Capital informed</p> <p>9 us that the proposal was not accepted and they asked us</p> <p>10 to increase the bid price. So from then on, no further</p> <p>11 progress was made. And in 2009 we reviewed some</p> <p>12 additional material to that deal.</p> <p>13 MR MOHR: Mr Chairman, it appears to me that the witness was</p> <p>14 reading his answer. May I obtain a clarification of</p> <p>15 what documents Dr Kim has with him?</p> <p>16 A. No, these are copies of the evidentiary documents</p> <p>17 submitted for the arbitration. And the first document</p> <p>18 I have with me here is a letter that I sent to</p> <p>19 Mr Safinov dated August 12th 2011.</p> <p>20 Document number 2 is Exhibit C-108, and this is</p> <p>21 a copy of the indicative proposal sent by KNOC to</p> <p>22 Renaissance Capital dated September 26th 2008.</p> <p>23 Document number 3 is C-303. Now, this is just</p> <p>24 general information on the bid, dated August 15 th 2008,</p> <p>25 which is sent to us, at KNOC, by Renaissance Capital.</p> <p style="text-align: center;">Page 4</p>

<p>09:43 1 Number 4 is Exhibit C-70: it is the confidential</p> <p>2 information memorandum given to us by Renaissance</p> <p>3 Capital with regard to Project Zenith.</p> <p>4 Do you want me to go through this entire list of</p> <p>5 what I have in front of me?</p> <p>6 (Interruption in video conference)</p> <p>7 DR NACIMIENTO: Maybe while this is being dealt with, am</p> <p>8 I correct in assuming that you sent documents to Dr Kim?</p> <p>9 MR MOHR: Yes, that's correct, and those are the documents</p> <p>10 so far that he has gone through. I think it would be</p> <p>11 helpful just to have him complete the list and then</p> <p>12 confirm that he has no other documents, notes,</p> <p>13 correspondence, things like that, with him.</p> <p>14 DR NACIMIENTO: Yes. Why don't you do this when you ask the</p> <p>15 questions then?</p> <p>16 MR MOHR: I think before you continue asking questions,</p> <p>17 I need a complete list of everything he has in front of</p> <p>18 him and a confirmation that he has no notes or other</p> <p>19 documents with him.</p> <p>20 DR NACIMIENTO: Then we can just ask him to put it aside;</p> <p>21 that should be fine.</p> <p>22 THE WITNESS: Then I will continue to describe the documents</p> <p>23 that I have in front of me --</p> <p>24 DR NACIMIENTO: Dr Kim, just a second, please.</p> <p>25 So can we ask him to just put it aside?</p> <p style="text-align: center;">Page 5</p>	<p>09:48 1 including review of pertinent data and materials,</p> <p>2 on-site visits, and also review of relevant contracts.</p> <p>3 And upon such due diligence, we could then be able to</p> <p>4 formulate a more accurate pricing. This is the internal</p> <p>5 practice.</p> <p>6 Q. Thank you. What happened after phase 1?</p> <p>7 A. As I mentioned earlier, can I take a moment to verify</p> <p>8 the date, please? Yes, on September 26th 2008 KNOC</p> <p>9 submitted its indicative offer to Renaissance Capital.</p> <p>10 However, Renaissance Capital did not accept our offer</p> <p>11 and phase 1 pretty much ended there, with no further</p> <p>12 progress being made. And then in July 2009 we visited</p> <p>13 Bucharest to attend a presentation and a session to</p> <p>14 review some of the relevant material. Then no</p> <p>15 significant further progress was made after that, and</p> <p>16 then the case closed thereafter.</p> <p>17 Q. Did you ever make a binding offer?</p> <p>18 A. No.</p> <p>19 Q. Can you explain why not?</p> <p>20 A. Let me provide an answer to that in two steps.</p> <p>21 Step number 1: according to the bid information and</p> <p>22 the deadline information provided to us by Renaissance</p> <p>23 Capital, we needed to submit an indicative offer, and</p> <p>24 then the seller would review that indicative offer and</p> <p>25 go through a bidder selection process. When the bidders</p> <p style="text-align: center;">Page 7</p>
<p>09:45 1 THE CHAIRMAN: Yes, I think that is what he should do.</p> <p>2 MR MOHR: Yes, if he could remove all the documents he has</p> <p>3 in front of him.</p> <p>4 DR NACIMIENTO: Dr Kim, may I ask you for the time being to</p> <p>5 put aside this binder of documents, and once counsel for</p> <p>6 claimant starts asking questions, you can refer to this</p> <p>7 again.</p> <p>8 A. Yes, that is fine with me.</p> <p>9 Q. Dr Kim, you were referring to your indicative offer in</p> <p>10 phase 1 of Project Zenith. Could you tell us what was</p> <p>11 the information that this indicative offer was based on?</p> <p>12 A. That indicative proposal was created based on the</p> <p>13 information contained in the confidential information</p> <p>14 memorandum that was submitted to us by Renaissance</p> <p>15 Capital, which is the investment bank representing the</p> <p>16 seller of the assets.</p> <p>17 Q. Would you consider this indicative offer as a reflection</p> <p>18 of a fair market value?</p> <p>19 A. I do not believe that I can say so.</p> <p>20 Q. Can you elaborate on that? Why not?</p> <p>21 A. Because typically in a sale involving an oilfield the</p> <p>22 seller usually provides an information memorandum, which</p> <p>23 we base on to create our indicative offer. And if that</p> <p>24 indicative offer is accepted by the seller, then we move</p> <p>25 on to the next step, which involves due diligence,</p> <p style="text-align: center;">Page 6</p>	<p>09:52 1 are selected in this process then we would move on to</p> <p>2 phase 2. However, as I mentioned earlier, after we</p> <p>3 submitted the indicative offer as part of phase 1,</p> <p>4 Renaissance Capital did not accept that offer, so no</p> <p>5 further progress was made thereon.</p> <p>6 Please allow me to explain what happened in</p> <p>7 July 2009. The actual owner of the oilfields, Mr Stati,</p> <p>8 in the course of talking to him, he told us that the</p> <p>9 deal is actually not yet closed and there still remains</p> <p>10 an opportunity open for us to participate in the bid,</p> <p>11 and with that comment he invited myself and the KNOC</p> <p>12 team to visit Bucharest for a management presentation</p> <p>13 and an opportunity to review some of the relevant</p> <p>14 materials.</p> <p>15 So I took my team to Bucharest and we went through</p> <p>16 some of the materials that became available to us. But</p> <p>17 upon review of those presentation materials, we</p> <p>18 discovered that there were some unsolved questions with</p> <p>19 regard to the project. So from then on, no further</p> <p>20 progress has been made.</p> <p>21 Q. Thank you. Did Korean National Oil Company ever speak</p> <p>22 to the Kazakh authorities about the purchase of the two</p> <p>23 companies, KPM and TNG?</p> <p>24 A. No.</p> <p>25 Q. Did the Kazakh authorities ever try to discourage you</p> <p style="text-align: center;">Page 8</p>

<p>09:55 1 from buying those companies?</p> <p>2 A. No. That decision for us to withdraw from the bid</p> <p>3 process was purely based on KNOC's decision after their</p> <p>4 review of relevant information and also the management</p> <p>5 presentation and the material provided to us in</p> <p>6 Bucharest back in July 2009.</p> <p>7 DR NACIMIENTO: Thank you. I have no further questions.</p> <p>8 THE CHAIRMAN: Alright. We will continue now with the</p> <p>9 questioning from the claimant's side, please.</p> <p>10 Cross-examination by MR MOHR</p> <p>11 Q. Dr Kim, good afternoon. Please turn to Exhibit C-18,</p> <p>12 which is the offer letter. I believe it is in tab 1 of</p> <p>13 the documents that we provided.</p> <p>14 A. Yes, I have turned to that letter.</p> <p>15 Q. This letter in the -- I apologise, I believe we are</p> <p>16 looking now at tab 2, which is Exhibit C-18, which is</p> <p>17 the offer letter.</p> <p>18 A. Yes, I am looking at it right now.</p> <p>19 Q. In paragraph 1 of the offer letter it states that KNOC's</p> <p>20 offer for the assets was US\$1.55 million; correct?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. And the allocation of that offer is broken down on</p> <p>23 annex A to this letter, right? The last page.</p> <p>24 A. Are you referring to the information on page 6?</p> <p>25 Q. Correct.</p> <p style="text-align: center;">Page 9</p>	<p>10:01 1 A. I have no clear recollection of that, but I assume that</p> <p>2 Merrill Lynch did work with some of the staff here at</p> <p>3 KNOC.</p> <p>4 Q. Did your staff prepare an evaluation or an economic</p> <p>5 model that led up to the \$1.55 billion indicative offer</p> <p>6 that your company made?</p> <p>7 A. Yes, they did.</p> <p>8 Q. If requested by this Tribunal, would you be willing to</p> <p>9 provide copies of the valuation documents and any</p> <p>10 correspondence either internally or with Merrill Lynch</p> <p>11 related to that?</p> <p>12 A. I don't think or I am not sure I would be able to do</p> <p>13 that because those documents are basically our</p> <p>14 confidential internal documents. So if we were to</p> <p>15 submit this, we run the risk of disclosing sensitive</p> <p>16 information about how this price and the bid came about,</p> <p>17 and also some internal factors in our decision-making</p> <p>18 process. So unless there are any compulsory or</p> <p>19 mandatory obligations -- then I would be happy to do</p> <p>20 so -- I do not want to disclose this information or</p> <p>21 submit it to the Panel.</p> <p>22 Q. Dr Kim, when you received the request from Mr Safinov,</p> <p>23 from the executive secretary of the Ministry of Oil and</p> <p>24 Gas, that caused you to write your letter dated</p> <p>25 August 12th 2011, did you believe at that time that you</p> <p style="text-align: center;">Page 11</p>
<p>09:58 1 A. Yes, that's correct.</p> <p>2 Q. So that \$1.55-billion offer was broken down:</p> <p>3 \$203 million for the Borankol oilfield, \$1.067 billion</p> <p>4 for the Tolkyn field, and \$280 million for the LPG</p> <p>5 plant; correct?</p> <p>6 A. Yes, that's correct.</p> <p>7 Q. Did that reflect your company's valuation of those</p> <p>8 assets at that time, at least based on the information</p> <p>9 you had, and subject, of course, to all of the</p> <p>10 conditions that are stated in your letter?</p> <p>11 A. Yes. It is first of all based on the assumption that</p> <p>12 the information provided to us by Renaissance Capital in</p> <p>13 its information memorandum are all correct, and we used</p> <p>14 our internal valuation criteria to come up with this</p> <p>15 condition-based price.</p> <p>16 Q. Now, you also testified earlier that you engaged</p> <p>17 Merrill Lynch with respect to analysing this potential</p> <p>18 transaction; correct?</p> <p>19 A. Merrill Lynch is actually our adviser. On the actual</p> <p>20 valuation, the amount that we came up with was</p> <p>21 determined internally at KNOC according to our own</p> <p>22 internal criteria.</p> <p>23 Q. Did Merrill Lynch provide you with any written analysis</p> <p>24 or valuation reports or other written documents with</p> <p>25 respect to this transaction?</p> <p style="text-align: center;">Page 10</p>	<p>10:04 1 were under any legal obligation to respond to his</p> <p>2 request?</p> <p>3 A. No, I did not think so.</p> <p>4 Q. Is it your company's normal practice to provide</p> <p>5 information regarding the amount that it offered in</p> <p>6 confidential negotiations and the status of confidential</p> <p>7 acquisition negotiations to anyone who asks?</p> <p>8 A. Yes, in that letter, if you look at that letter, it was</p> <p>9 actually Mr Safinov who came to us with his prior</p> <p>10 knowledge of that amount. He wrote that letter just to</p> <p>11 ask us to verify whether we did indeed submit the</p> <p>12 indicative offer with the price of \$1.55 billion on it.</p> <p>13 So we just responded to that request for confirmation;</p> <p>14 we did not volunteer to provide that price information</p> <p>15 to Safinov.</p> <p>16 Q. Now, Renaissance Capital contacted your company in</p> <p>17 January or February 2009 to enquire whether your company</p> <p>18 was interested in proceeding with the second phase of</p> <p>19 Project Zenith at that time; correct?</p> <p>20 A. No, I have no recollection of that.</p> <p>21 Q. Did you review any documents, any files of your company,</p> <p>22 prior to testifying here today?</p> <p>23 A. No. I run on a very tight and busy schedule, so I was</p> <p>24 not able to look at any other material outside of the</p> <p>25 evidentiary documents that were submitted to me by the</p> <p style="text-align: center;">Page 12</p>



<p>10:08 1 legal counsel.</p> <p>2 Q. Let me make sure that I know who worked on this project</p> <p>3 with you. Who was the managing director of the project?</p> <p>4 Was that EuGene Synn?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. And was Mr Jong Woo Kim the team leader on the project?</p> <p>7 A. Yes, this is how the organisation is structured. I was</p> <p>8 head of the new energy exploration, new venture</p> <p>9 division, and under me was Mr EuGene Synn, and under him</p> <p>10 was Mr Jong Woo Kim.</p> <p>11 Q. Prior to testifying, did you speak with either of those</p> <p>12 two individuals to refresh your recollection about what</p> <p>13 occurred in the course of these events from 2008 and</p> <p>14 2009?</p> <p>15 A. No, I did not meet with him. And just for your</p> <p>16 information, I tend to have a very good memory of the</p> <p>17 fellow workers here at KNOC, with the great memory that</p> <p>18 I have, and for your information I graduated from the</p> <p>19 top high school as well as the top university here in</p> <p>20 Korea.</p> <p>21 Q. Is it possible that Renaissance Capital contacted either</p> <p>22 Mr Synn or Mr Kim in the January/February 2009</p> <p>23 timeframe?</p> <p>24 A. I am not aware of that fact.</p> <p>25 Q. But you simply don't know whether that happened one way</p> <p style="text-align: center;">Page 13</p>	<p>10:16 1 document, there is an email, I believe it is from you to</p> <p>2 Artur Lungu, I believe dated 20th July 2009, and the</p> <p>3 subject is "RE: Meeting in Bucharest". Do you see that</p> <p>4 email?</p> <p>5 A. Yes, I am looking at it.</p> <p>6 Q. In this email you said:</p> <p>7 "Thank you very much for your hospitality and nice</p> <p>8 presentation during our stay in Bucharest.</p> <p>9 "I also hope we can reach a good result on this</p> <p>10 project."</p> <p>11 Is that what you wrote to Mr Lungu?</p> <p>12 A. Yes.</p> <p>13 Q. At that point in time, after that meeting in Bucharest,</p> <p>14 you were interested in moving forward with the</p> <p>15 acquisition, weren't you?</p> <p>16 A. No. Upon listening to the management presentation and</p> <p>17 being provided materials, we discovered that there were</p> <p>18 serious problems to the project from a commercial</p> <p>19 perspective.</p> <p>20 Q. Did you have any further communications with the sellers</p> <p>21 to try to resolve some of the -- I think you referred to</p> <p>22 them as "unsolved questions" regarding the project?</p> <p>23 A. No.</p> <p>24 Q. Is it normal for your company, after having</p> <p>25 a several-day management meeting regarding a potential</p> <p style="text-align: center;">Page 15</p>
<p>10:11 1 or the other; correct?</p> <p>2 A. Yes, that's correct. I don't know whether that happened</p> <p>3 or not.</p> <p>4 Q. In July 2009, when your company resumed negotiations</p> <p>5 with the sellers regarding these assets, were you aware</p> <p>6 at that time that the general manager of Kazpolmunay had</p> <p>7 been arrested on charges of illegal entrepreneurial</p> <p>8 activity by the Kazakhstan Government?</p> <p>9 A. Let me make a correction to part of your question. In</p> <p>10 July 2009 KNOC did not re-enter the negotiations. At</p> <p>11 that time we were listening to the management</p> <p>12 presentations that were prepared for us, and we looked</p> <p>13 first at the relevant material. And I was not aware of</p> <p>14 that arrest.</p> <p>15 Q. In fact, in July 2009 your team attended a several day</p> <p>16 meeting in Bucharest with the sellers, management and</p> <p>17 technical staff; correct?</p> <p>18 A. Yes. It was over two days that were listening to</p> <p>19 a management presentation and looking through relevant</p> <p>20 documents.</p> <p>21 Q. If you will turn to Exhibit C-709, which, if it is</p> <p>22 tabbed the same as our binders, is under tab 7. It is</p> <p>23 a series of emails from July 2009.</p> <p>24 A. Yes, I am looking at them right now.</p> <p>25 Q. If you turn to, I believe, the fifth page of the</p> <p style="text-align: center;">Page 14</p>	<p>10:18 1 acquisition, to drop the matter without so much as</p> <p>2 a phone call or an email to the seller?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Do you know Mr Timur Kulibayev?</p> <p>5 A. I don't know him.</p> <p>6 Q. Did you have any discussions with any representatives of</p> <p>7 Mr Kulibayev, or, for that matter, with Mr Kulibayev</p> <p>8 himself, about Mr Stati or his companies in Kazakhstan?</p> <p>9 A. No.</p> <p>10 Q. How many different holdings does your company have in</p> <p>11 Kazakhstan?</p> <p>12 A. Currently, or at that time?</p> <p>13 Q. At that time, July 2009.</p> <p>14 A. I recall around three.</p> <p>15 Q. How many does it have currently?</p> <p>16 A. Five.</p> <p>17 Q. Do you know the approximate value of those holdings?</p> <p>18 A. Yes. We have two explorative zones and three production</p> <p>19 zones, and with regard to the explorative zones, there</p> <p>20 is no oil discovered yet, we can't put a value on that;</p> <p>21 but for the production sites, approximately</p> <p>22 \$900 million.</p> <p>23 Q. If you turn to Exhibit C-538. If it is tabbed the same,</p> <p>24 it is behind tab 8.</p> <p>25 A. Yes, I am looking at it.</p> <p style="text-align: center;">Page 16</p>

<p>10:22 1 Q. This document from your company's website refers to</p> <p>2 a company in Kazakhstan called Sumbe that your company</p> <p>3 acquired. Do you see that?</p> <p>4 A. Yes, I am aware of that.</p> <p>5 Q. Did that transaction close in December 2009, or around</p> <p>6 that time?</p> <p>7 A. Yes, that's correct.</p> <p>8 Q. This document refers to a deal, the deal being with</p> <p>9 a Kazakh partner who acquired 15% of Sumbe. Who is that</p> <p>10 Kazakh partner?</p> <p>11 A. Yes, it is a project partner of ours called Kernhem.</p> <p>12 Q. Could you repeat that? I could not understand.</p> <p>13 A. It is one of our project partners by the name of</p> <p>14 Kernhem.</p> <p>15 Q. Perhaps it would be helpful just to spell that for the</p> <p>16 record.</p> <p>17 A. It's Kernhem International, K-E-R-N-H-E-M, and then</p> <p>18 International.</p> <p>19 Q. Do you know the Minister of Natural Resources for the</p> <p>20 Kurdistan region of Iraq, Dr Ashti Hawrami?</p> <p>21 A. Yes, I know him.</p> <p>22 Q. In fact, the -- let me ask a different question. Did</p> <p>23 you have any discussions with Dr Ashti Hawrami regarding</p> <p>24 the reasons why your company did not move forward with</p> <p>25 an acquisition of these companies in Kazakhstan?</p> <p style="text-align: center;">Page 17</p>	<p>10:30 1 and political issues that faced these companies in the</p> <p>2 summer of 2009?</p> <p>3 A. Again, let me explain why we did not proceed with this.</p> <p>4 The assets in question were gasfields, and gasfields</p> <p>5 require a prior sales agreement in place in order to</p> <p>6 establish any market value on those assets. But there</p> <p>7 were no sales contracts with regard to these assets in</p> <p>8 question, and it was impossible to formulate any kind of</p> <p>9 market price or market value on that. And that was the</p> <p>10 prime commercial reason, as I mentioned earlier, why we</p> <p>11 did not further proceed with this deal. And hiring</p> <p>12 lawyers costs money, so we had already concluded that</p> <p>13 there was no commercial viability to this deal, so why</p> <p>14 would we spend money on legal fees?</p> <p>15 Q. Thank you. When did Kazakhstan's counsel contact you</p> <p>16 about providing witness testimony in this case?</p> <p>17 A. I recall about ten days ago.</p> <p>18 Q. Was that based on your recollection, or were you</p> <p>19 provided with that answer by your counsel?</p> <p>20 A. Again, I work on a very busy and tight schedule, so</p> <p>21 I confirmed with KNOC's in-house legal counsel.</p> <p>22 Q. Did you have any meetings or telephone conferences with</p> <p>23 counsel for Kazakhstan prior to your testimony today?</p> <p>24 So I would ask you to testify to the best of your own</p> <p>25 recollection, without consulting with the counsel there.</p> <p style="text-align: center;">Page 19</p>
<p>10:26 1 A. If you would allow me some time, maybe I could give you</p> <p>2 more details as to why we decided to withdraw from the</p> <p>3 bid process.</p> <p>4 Q. Well, my question was whether you had any discussions</p> <p>5 with Dr Ashti Hawrami regarding that issue.</p> <p>6 A. No.</p> <p>7 Q. Please turn to tab 5, which is Exhibit C-625. This is</p> <p>8 an email dated December 18th. I think you can disregard</p> <p>9 the top half of the first page; I want to focus on the</p> <p>10 Interfax news report dated December 18th that begins</p> <p>11 about two-thirds of the way down this page.</p> <p>12 A. Yes, I am looking at it.</p> <p>13 Q. Were you aware in July 2009 that the Kazakh Government</p> <p>14 had raised questions about the seller's title to TNG?</p> <p>15 A. No, because again -- I have to repeat myself -- we were</p> <p>16 only interested in the commercial aspects of the deal;</p> <p>17 we had no interest in the political dimensions of it.</p> <p>18 Q. Well, if you turn back to tab 7, which is Exhibit C-709,</p> <p>19 the emails that we looked at earlier.</p> <p>20 A. Yes.</p> <p>21 Q. This email that you wrote on July 20th copies</p> <p>22 Sean Mueller at Merrill Lynch; correct?</p> <p>23 A. Let me take a look. Yes, I see Merrill Lynch on it.</p> <p>24 Q. So is it your testimony that neither you nor</p> <p>25 Merrill Lynch conducted any analysis of the legal issues</p> <p style="text-align: center;">Page 18</p>	<p>10:34 1 A. Yes, we had one telephone conversation.</p> <p>2 Q. Approximately how long did that conversation last?</p> <p>3 DR NACIMIENTO: Counsel, I think you are getting really now</p> <p>4 into crossing the line to attorney-client privilege.</p> <p>5 THE CHAIRMAN: I think so.</p> <p>6 MR MOHR: Let me ask then a few foundational questions.</p> <p>7 Dr Kim, does Norton Rose represent the Korean</p> <p>8 National Oil Company with respect to your testimony</p> <p>9 today?</p> <p>10 A. No.</p> <p>11 MR MOHR: Mr Chairman, it is the claimant's position that</p> <p>12 there is no privilege between counsel for the respondent</p> <p>13 and a representative from a third party, the Korean</p> <p>14 National Oil Company, and so we do not believe that</p> <p>15 there is any basis for a privilege objection to these</p> <p>16 communications.</p> <p>17 THE CHAIRMAN: If this gets into a serious dispute, I will</p> <p>18 have to withdraw to talk to my colleagues. My</p> <p>19 inclination would presently be that indeed there is</p> <p>20 a privilege in that regard, but it doesn't really</p> <p>21 matter. He is a witness in this case, Norton Rose is</p> <p>22 the law firm representing the respondent, so what they</p> <p>23 do -- we had this question earlier in the hearing. The</p> <p>24 discussions between counsel and witnesses is, I think,</p> <p>25 beyond a certain limit, privileged.</p> <p style="text-align: center;">Page 20</p>



<p>10:36 1 MR MOHR: What about the length of time of the discussion?</p> <p>2 THE CHAIRMAN: As I said before, I think that is part of it.</p> <p>3 MR HAIGH: Mr Chairman, if it would help, there is a concept</p> <p>4 of litigation privilege and as I understand it, either</p> <p>5 party is free to interview a witness; but disclosing</p> <p>6 what was discussed with the witness is a different</p> <p>7 subject, it seems to me. In other words, there is no</p> <p>8 property in a witness, but the communications that occur</p> <p>9 bilaterally between counsel and that witness may still</p> <p>10 be part of the litigation brief.</p> <p>11 MR MOHR: I think in the interests of time, I will pass the</p> <p>12 witness.</p> <p>13 THE CHAIRMAN: Any questions from respondent in re-direct?</p> <p>14 (10.37 am)</p> <p>15 Re-direct examination by DR NACIMIENTO</p> <p>16 Q. Just one last question for clarification, Dr Kim. Upon</p> <p>17 question from counsel for claimants, in the context of</p> <p>18 why KNOC never submitted a binding offer, your answer</p> <p>19 was that there were serious problems to the project from</p> <p>20 a commercial perspective. Can you describe this with</p> <p>21 more details?</p> <p>22 A. Yes. Around the time we submitted the indicative offer</p> <p>23 in September 2008 we had some anticipation with regard</p> <p>24 to the conclusion of gas sales contracts because</p> <p>25 according to the material and information submitted to</p> <p style="text-align: center;">Page 21</p>	<p>10:42 1 Energy of Canada and Sumbe company of Kazakhstan to</p> <p>2 fulfil the mission as part of the government budget</p> <p>3 agreement.</p> <p>4 So we no longer spent time with this deal involving</p> <p>5 Tolkyn gasfield, and we closed the deal right then and</p> <p>6 there.</p> <p>7 DR NACIMIENTO: Thank you. I have no further questions.</p> <p>8 THE CHAIRMAN: Any questions from you, please, claimant?</p> <p>9 MR MOHR: Just, I believe, one follow-up.</p> <p>10 (10.43 am)</p> <p>11 Further cross-examination by MR MOHR</p> <p>12 Q. The gas sales contract from the fall of 2008 that you</p> <p>13 referenced in your answer, was that a contract that was</p> <p>14 under negotiation that involved the supply of gas to</p> <p>15 an ammonia plant by the name of KazAzot, if you recall?</p> <p>16 A. No, I am not familiar with the details. But if you look</p> <p>17 on page 10 of Exhibit C-70, it mentions something to the</p> <p>18 effect that gas sales contract negotiations are</p> <p>19 underway, and no such agreements or contracts have been</p> <p>20 signed yet.</p> <p>21 MR MOHR: Thank you.</p> <p>22 THE CHAIRMAN: Any questions from my colleagues? Mr Haigh?</p> <p>23 MR HAIGH: No, thank you.</p> <p>24 PROFESSOR LEBEDEV: No, thank you.</p> <p>25 THE CHAIRMAN: No questions from me.</p> <p style="text-align: center;">Page 23</p>
<p>10:41 1 us by Renaissance Capital with regard to the Tolkyn</p> <p>2 gasfields, it said that negotiations for these sales</p> <p>3 agreements on those gas products are underway. So we</p> <p>4 naturally expected that agreement to come into existence</p> <p>5 pretty soon. But in July 2009, when we went to</p> <p>6 Bucharest, even then no definitive gas sales agreements</p> <p>7 had been signed then either. So we decided to withdraw</p> <p>8 from that altogether.</p> <p>9 For oil reserves and oilfields, we are dealing with</p> <p>10 crude oil, which is rather easy to store and also ship</p> <p>11 in itself. But for gas, you cannot put a price on it</p> <p>12 without any pre-established gas sales agreements in</p> <p>13 place, and that is international practice and norms with</p> <p>14 regard to the distribution of energy products. So,</p> <p>15 since there weren't any gas sales agreements in place</p> <p>16 with regard to this deal in question, we were not able</p> <p>17 to place a value on that deal. So after that visit to</p> <p>18 Bucharest in July 2009, we no longer progressed further</p> <p>19 with this deal.</p> <p>20 At that time the Government of the Republic of Korea</p> <p>21 gave the national budget to KNOC to come up with</p> <p>22 definitive reserves. That was the mission that was</p> <p>23 entrusted on us, and I was the person responsible to</p> <p>24 carry out that mission given by the Government of the</p> <p>25 Republic of Korea. So instead we purchased Harvest</p> <p style="text-align: center;">Page 22</p>	<p>10:45 1 So thank you very much, Mr Kim, for taking the time</p> <p>2 of this testimony. This now concludes your testimony,</p> <p>3 and all the best to you and your staff in Korea. Thank</p> <p>4 you very much.</p> <p>5 THE WITNESS: Yes, thank you.</p> <p>6 THE CHAIRMAN: Goodbye.</p> <p>7 (10.45 am)</p> <p>8 THE CHAIRMAN: That concludes this section, obviously. We</p> <p>9 have, of course, another video conference coming up, but</p> <p>10 before -- has a time been set for that already?</p> <p>11 DR NACIMIENTO: Yes, we said we would start immediately</p> <p>12 after this first conference. The difference is that the</p> <p>13 person will speak in Russian, we have the interpreter</p> <p>14 here, sitting here with us in the room, and</p> <p>15 translating --</p> <p>16 THE CHAIRMAN: Simultaneously?</p> <p>17 DR NACIMIENTO: No, consecutively, because she will be</p> <p>18 sitting here in the room and not using the headphones.</p> <p>19 THE CHAIRMAN: All right. Nevertheless, it will take</p> <p>20 a little while to switch that; I don't know who will do</p> <p>21 that. Because I would like at the same time to discuss</p> <p>22 with counsel the procedural questions that may have</p> <p>23 occurred, not to lose time, before we have a break, and</p> <p>24 we would like to have some reaction.</p> <p>25 We have received -- and of course claimants as</p> <p style="text-align: center;">Page 24</p>

<p>10:46 1 well -- the request from respondent over the weekend</p> <p>2 that Mr Akhmetov be also called to testify for direct,</p> <p>3 and obviously the question to claimants is: what is</p> <p>4 their reaction to that?</p> <p>5 MR SMITH: Well, the claimants had, until that request was</p> <p>6 made, waived cross-examination of the witness. We are</p> <p>7 unsure what he would be asked on direct that is not</p> <p>8 contained in his witness statement, given that the</p> <p>9 respondent got the last submission in the matter. We</p> <p>10 are unsure what new he would be responding to.</p> <p>11 So I guess the question for respondents is why they</p> <p>12 feel the need to call him for direct examination.</p> <p>13 Obviously if they do, then we will cross-examine him.</p> <p>14 THE CHAIRMAN: Can you give any further information on that?</p> <p>15 DR NACIMIENTO: Yes, very briefly, Mr Chairman.</p> <p>16 Respondent has not waived Mr Akhmetov. We heard</p> <p>17 from counsel for claimants last week -- I am not sure</p> <p>18 whether it was Friday -- that Mr Akhmetov was not to be</p> <p>19 called. By that time, he had already arrived here. We</p> <p>20 then reviewed also the transcript and we saw that there</p> <p>21 are questions arising with regard to the Agency of</p> <p>22 Natural Monopolies, and he is here to answer those</p> <p>23 questions.</p> <p>24 We respectfully request that we hear him on direct</p> <p>25 examination. It is, of course, on respondent's time</p> <p style="text-align: center;">Page 25</p>	<p>10:57 1 a declaration to us, and the interpreter will read it</p> <p>2 out to you in Russian, and if you would kindly confirm</p> <p>3 the declaration after you have heard it.</p> <p>4 THE INTERPRETER: (Reads out witness declaration)</p> <p>5 THE WITNESS: Yes, I confirm.</p> <p>6 THE CHAIRMAN: Thank you very much, Mr Rakhimov. I turn</p> <p>7 you</p> <p>8 over to the first examination by the respondent.</p> <p>9 (10.58 am)</p> <p>10 Direct examination by DR NACIMIENTO</p> <p>11 Q. Good afternoon, Mr Rakhimov. You submitted a witness</p> <p>12 statement in this arbitration. Is there anything that</p> <p>13 you would like to add or amend?</p> <p>14 A. No, nothing at all.</p> <p>15 Q. Mr Rakhimov, could you please describe your position in</p> <p>16 the summer of 2010?</p> <p>17 A. Do you mean in July?</p> <p>18 Q. Yes.</p> <p>19 A. At that time, in July 2010, I was senior investigator at</p> <p>20 the department for investigating economic crimes at the</p> <p>21 financial police.</p> <p>22 Q. Thank you. In your witness statement you refer to</p> <p>23 a document which has been submitted by claimants in this</p> <p>24 arbitration under the reference C-711.1. Could you</p> <p>25 please describe when you first learned about this</p> <p>document?</p> <p style="text-align: center;">Page 27</p>
<p>10:48 1 budget. Nevertheless we will be short, but we think it</p> <p>2 will be helpful for the Tribunal to hear that.</p> <p>3 THE CHAIRMAN: Let's not dispute what is not disputed</p> <p>4 anymore. I understand claimants are ready to</p> <p>5 cross-examine Mr Akhmetov. The obvious question is only</p> <p>6 that you -- and this is how I understand you -- will</p> <p>7 only examine him directly beyond the five minutes on</p> <p>8 anything that has occurred after his last statement?</p> <p>9 DR NACIMIENTO: That's right.</p> <p>10 THE CHAIRMAN: And you say it will be short anyway?</p> <p>11 DR NACIMIENTO: That's right.</p> <p>12 THE CHAIRMAN: So I think we will proceed in that way.</p> <p>13 Shall we have a three-minute break? I think that</p> <p>14 would be good. Perhaps we can advise the witness that</p> <p>15 he bear with us for another three to five minutes</p> <p>16 because we have just finished another examination. So</p> <p>17 make sure he doesn't run away!</p> <p>18 (10.50 am)</p> <p>19 (A short break)</p> <p>20 (10.55 am)</p> <p>21 MR SERIK DOSYMOVICH RAKHIMOV (called)</p> <p>22 (Via video conference)</p> <p>23 (Evidence interpreted)</p> <p>24 THE CHAIRMAN: We resume the hearing. Welcome, Mr</p> <p>25 Rakhimov.</p> <p>Our procedure is here that every witness has to read out</p> <p style="text-align: center;">Page 26</p>	<p>11:00 1 A. I learned about this document quite recently, a couple</p> <p>2 of weeks ago. It was handed over to me by our</p> <p>3 Prosecutor General's Office for review.</p> <p>4 Q. Could you describe the document?</p> <p>5 A. As far as the form of this document is concerned, it is</p> <p>6 a report to the chairman of the Agency for Financial Police,</p> <p>7 General Kozhamzharov, and</p> <p>8 there is an abbreviated designation of the author</p> <p>9 quoting my data, but there is no signature. And the</p> <p>10 text, the content of it is a description of criminal</p> <p>11 cases before the period when I ...</p> <p>12 THE INTERPRETER: It is a bit unclear about the period.</p> <p>13 (Consults the witness) The interpreter just asked about</p> <p>14 the period.</p> <p>15 A. So the text contains description of criminal cases and</p> <p>16 inspections carried out before that time, before</p> <p>17 July 2010, namely in 2008, 2009 and early or probably</p> <p>18 mid-2010, but not July or August. This document also</p> <p>19 describes certain facts about which I learnt quite</p> <p>20 recently, probably a couple of weeks ago.</p> <p>21 Q. Thank you, Mr Rakhimov. Did you write this report?</p> <p>22 A. Well, if you abstract yourselves away from the</p> <p>23 abbreviations which indicate that I am senior inspector</p> <p>24 and lieutenant colonel, the rest of this document does</p> <p>25 not correspond to true facts, is not true. Such report</p> <p style="text-align: center;">Page 28</p>

<p>11:05 1 could not be written by an operative officer; it does</p> <p>2 not comply with the necessary format of such document.</p> <p>3 The format and the contents of this document rather</p> <p>4 could be characterised as a kind of explanatory</p> <p>5 memorandum. And this document has not been written by</p> <p>6 me.</p> <p>7 Q. You mentioned before that it is addressed to the head of</p> <p>8 the financial police. In your position at that time, in</p> <p>9 summer of 2010, would you have written directly to the</p> <p>10 head of the financial police?</p> <p>11 A. If you take into account the internal rules of our</p> <p>12 agency, of our financial police -- and in this case</p> <p>13 I think it would be similar to the internal disciplinary</p> <p>14 regulations in, for example, UK Army -- then a common</p> <p>15 soldier cannot address directly the commander-in-chief</p> <p>16 unless there is something absolutely out of the</p> <p>17 ordinary. And this is a similar situation here: one</p> <p>18 might need a special dispensation from the minister to</p> <p>19 do this.</p> <p>20 Q. Thank you, Mr Rakhimov.</p> <p>21 A. We have a very clear chain of command at our agency so</p> <p>22 that lower officers cannot directly address the top</p> <p>23 command of the financial police, bypassing the</p> <p>24 intermediate stages. So in my position, for example,</p> <p>25 I ought to address first the head of the department;</p> <p style="text-align: center;">Page 29</p>	<p>11:10 1 someone else within the financial police?</p> <p>2 A. I have no specific knowledge about anything that</p> <p>3 happened on July 9th. It is possible that someone from</p> <p>4 the working commission make such a contact, but I know</p> <p>5 nothing about this.</p> <p>6 Q. Were you present at KPM or TNG's offices in July 2010?</p> <p>7 A. The officers of KPM and TNG are situated in the same</p> <p>8 building and I did actually visit this building. Do you</p> <p>9 mean specifically on 9th July 2010?</p> <p>10 Q. Anytime in July 2010.</p> <p>11 A. Yes, I was there.</p> <p>12 Q. What were you doing there?</p> <p>13 A. My task was to supervise the observance of the proper</p> <p>14 procedures and legality in the seizure of documents, so</p> <p>15 that there will be, for example, no resistance to or</p> <p>16 refusals to provide the necessary documents to the</p> <p>17 working group, and to generally supervise the observance</p> <p>18 of order.</p> <p>19 Q. You just made a reference to the working group. Who</p> <p>20 were the members of the working group?</p> <p>21 A. Well, all the problem is that the agents of the</p> <p>22 financial police received invitation to participate in</p> <p>23 the group a bit late, and the officers arrived in Aktau</p> <p>24 at 5.00 in the evening on the 3rd. And when we called</p> <p>25 the KPM office, we were told that the working day was</p> <p style="text-align: center;">Page 31</p>
<p>11:08 1 then, for example, the deputy commander of the police;</p> <p>2 and only then come to the topmost level.</p> <p>3 DR NACIMIENTO: Thank you. I have no further questions.</p> <p>4 THE CHAIRMAN: Thank you very much.</p> <p>5 We now turn to the cross-examination by the</p> <p>6 claimant.</p> <p>7 MS ROEBUCK FREY: Thank you.</p> <p>8 (11.08 am)</p> <p>9 Cross-examination by MS ROEBUCK FREY</p> <p>10 Q. Good afternoon, Mr Rakhimov. My name is Amy Frey and</p> <p>11 I represent the claimants in this arbitration.</p> <p>12 I understand you to say that you had nothing to do</p> <p>13 with the preparation of the report that is C-711.1. Is</p> <p>14 that correct?</p> <p>15 A. I have learned about this document only a couple of</p> <p>16 weeks ago, with all the consequences that follow from</p> <p>17 this fact.</p> <p>18 Q. Do you know who prepared this report?</p> <p>19 A. It is hard to say for me. But judging by the stylistics</p> <p>20 of this document, it was not written by an operative</p> <p>21 officer. Operative officers cannot write such long</p> <p>22 documents.</p> <p>23 Q. Are you aware that on July 9th 2010 a representative</p> <p>24 from the financial police asked a secretary at TNG's</p> <p>25 offices in Aktau to send this document in an email to</p> <p style="text-align: center;">Page 30</p>	<p>11:14 1 over and all the employees had already left, and we were</p> <p>2 invited to come on the 7th at 9.00 in the morning. And</p> <p>3 when we arrived at the office in the morning of the 7th,</p> <p>4 more than half of the working group had already left --</p> <p>5 that is, they left Aktau -- because they had completed</p> <p>6 their work.</p> <p>7 Q. You said a couple of times that you or the financial</p> <p>8 police were invited to participate in this working</p> <p>9 group. Who invited you to participate?</p> <p>10 A. There was a letter, I believe from the Office of the</p> <p>11 Prosecutor General, informing us that a working group</p> <p>12 had been set up, as I understand, due to a complaint</p> <p>13 received, and we were invited to participate in this</p> <p>14 group. In the final account in case the facts</p> <p>15 would be confirmed, we would start further</p> <p>16 investigation.</p> <p>17 Q. If you remember, approximately how many members from the</p> <p>18 financial police were involved in this working group in</p> <p>19 July 2010?</p> <p>20 A. We were only two. There were only two people from the</p> <p>21 financial police.</p> <p>22 Q. And that's yourself, and who was the other officer?</p> <p>23 A. Yes, and my namesake, Arman Rakhimov.</p> <p>24 Q. You mentioned in your direct examination that this</p> <p>25 report only refers to inspections that happened in 2008.</p> <p style="text-align: center;">Page 32</p>

<p>11:17 1 Did I understand you correctly?</p> <p>2 A. I don't remember exactly. With your permission, I will 3 check now. I don't remember correctly, but I believe 4 the document mentioned that there was a criminal case or 5 investigation started in 2008.</p> <p>6 Q. Well, I would just refer you to the third paragraph of 7 this report, which mentions: July 7th 2010, industrial 8 inspections that are being conducted by the Departments 9 of Emergency Situations, Labour and Social Protection, 10 and the Department for the Environment.</p> <p>11 A. So this would be the last-but-one paragraph in Russian? 12 THE INTERPRETER: This is apparently third from top on the 13 first page.</p> <p>14 Q. That's correct.</p> <p>15 A. Yes, I see it now. And so?</p> <p>16 Q. I just wanted to confirm that the Russian version you 17 have is the same as the English version I have been 18 reading from, so thank you.</p> <p>19 A. Yes, it corresponds.</p> <p>20 MS ROEBUCK FREY: Thank you. I have no further questions. 21 THE CHAIRMAN: Questions from the respondent's side? 22 DR NACIMIENTO: No further questions. 23 THE CHAIRMAN: Questions from my colleagues? 24 MR HAIGH: No, thank you, Mr Chairman. 25 THE CHAIRMAN: Questions from the other colleague? No. No</p> <p style="text-align: center;">Page 33</p>	<p>11:39 1 THE CHAIRMAN: Thank you very much, indeed. Respondent, 2 please. 3 DR NACIMIENTO: Thank you. 4 (11.39 am) 5 Direct examination by DR NACIMIENTO</p> <p>6 Q. Mr Akhmetov, you submitted a witness statement in this 7 arbitration. Is there anything you would like to add or 8 amend?</p> <p>9 A. I confirm the witness statement, but I would like to 10 make a clarification here that as of today there are 128 licences 11 for operation of main pipelines; not 115, as is stated 12 here, but 128.</p> <p>13 THE CHAIRMAN: Where is it stated, so that we know where the 14 correction is? Where in the witness statement, do you 15 know?</p> <p>16 A. Paragraph 3.3.</p> <p>17 THE CHAIRMAN: Thank you. So the 115 is now 128. Thank you 18 very much.</p> <p>19 DR NACIMIENTO: Mr Akhmetov, could you please describe your 20 professional background and your current position? 21 A. I studied law, and since I graduated from university 22 I have been working with state entities at different 23 positions. At the Agency for Regulation of Natural 24 Monopolies I have been working since May 2011 as the 25 executive secretary. The status, it corresponds to</p> <p style="text-align: center;">Page 35</p>
<p>11:21 1 questions from me.</p> <p>2 Well, Mr Rakhimov, thank you very much. This 3 concludes your testimony. Thank you for being available 4 in Kazakhstan and this is the end of the examination. 5 We can turn this off now.</p> <p>6 THE WITNESS: Thank you very much. Goodbye.</p> <p>7 THE CHAIRMAN: Would that still be a time for a coffee 8 break? It would. And after that, we would then hear 9 Mr Akhmetov?</p> <p>10 DR NACIMIENTO: That's right. 11 THE CHAIRMAN: Okay. 12 (11.22 am) 13 (A short break) 14 (11.38 am) 15 MR RUSTAM NURLANOVICH AKHMETOV (called) 16 (Evidence interpreted)</p> <p>17 THE CHAIRMAN: We resume the hearing. Welcome, Mr 18 Akhmetov. Mr Akhmetov, I think you have been here and know 19 what the procedure is. We would like you to read out 20 the declaration for witnesses, which I hope you have in 21 front of you also in Russian.</p> <p>22 THE WITNESS: I am aware that in my testimony I have to tell 23 the truth and nothing but the truth. I am also aware 24 that if I do not comply with this obligation, I may face 25 severe legal consequences.</p> <p style="text-align: center;">Page 34</p>	<p>11:41 1 first deputy head of this state body. And prior to 2 that, I had worked at the presidential office. 3 The position of executive secretary means that I am 4 guiding the staff of the agency working with human 5 resources, administrative issues, and also with legal 6 and operational issues.</p> <p>7 Q. Could you please explain the functions of the Agency on 8 Regulation of Natural Monopolies? 9 A. The Agency of the Republic of Kazakhstan for Regulation 10 of Natural Monopolies is an executive body, a central 11 government executive body, which carries out the 12 functions of regulation of natural monopolies by 13 establishing tariffs, top rates and regulation of tariff 14 policies, also approving cost budget, and some other 15 legal issues pertaining to natural monopolies. 16 Currently the natural monopolies are those dealing 17 with production/distribution of heat and electricity, 18 the services of main railways, air communications, airfields, 19 seaports and other ports, transportation of oil and oil 20 products through main pipelines. These are the key 21 areas of natural monopolies. 22 In addition to this, the agency works with licensing 23 of certain kinds of activities. Currently two kinds of 24 licences are in place: that is purchases of electricity 25 to be distributed to the population, and licensing of</p> <p style="text-align: center;">Page 36</p>

<p>11:43 1 operation of main pipelines.</p> <p>2 Q. With regard to the licensing of the main pipeline, could 3 you explain the procedure to apply for such a licence?</p> <p>4 A. As of today, the procedure for issuing a licence for 5 operation of main oil and gas pipelines is established 6 by the decision of the government in December 2007.</p> <p>7 THE INTERPRETER: Says the witness; first it was mentioned 8 2008.</p> <p>9 A. The procedure envisages that the applicant submits 10 a request and a few documents: the charter of the legal 11 entity; the certificate of state registration of a legal 12 entity. For physical persons it would be an ID, 13 personal; also certificate of registration as individual 14 entrepreneur; also a copy of payment of state taxes; the 15 identity card of a taxpayer.</p> <p>16 Q. How long does it usually take to --</p> <p>17 THE INTERPRETER: I am sorry, the interpreter interrupted 18 the witness because there was a list; he was speaking 19 too fast.</p> <p>20 A. So for a physical person, what was required for 21 a physical person, it would be an ID card and also 22 certificate of state registration as an individual 23 entrepreneur; then also a certificate of registration as 24 a taxpayer; and also receipt of payment of the licence 25 duty; and also documents confirming that the person in</p> <p style="text-align: center;">Page 37</p>	<p>11:48 1 A. Yes, that is the usual time, which covers all types of</p> <p>2 licensing, and actually envisaged in the Law on 3 Licensing.</p> <p>4 Q. Does the agency check whether it is a main pipeline or 5 not?</p> <p>6 A. No, the agency is not authorised to determine whether 7 the pipeline is main or not. We check first of all the 8 completeness of the submitted documents, and we assume 9 that when the documents were submitted, this person or 10 entity has the title or other legal grounds to this 11 pipeline. Currently, as of today, as I have mentioned 12 already, we have issued approximately 128 licences, but 13 so far there have been no issues or questions concerning 14 the classification of a pipeline.</p> <p>15 Q. Mr Akhmetov, you described the procedure for obtaining 16 a licence for a main pipeline. Is there a different 17 procedure for companies providing services?</p> <p>18 A. The fact is that the agency, our key area of activities 19 is regulation of natural monopolies, and out of such 20 monopolies one of the kinds is providing services of 21 transportation of oil and oil products and gas through 22 main pipelines.</p> <p>23 What is the difference? When services are provided, 24 services of transportation of oil and oil products 25 through main pipelines, in addition to operation, there</p> <p style="text-align: center;">Page 39</p>
<p>11:46 1 question has the necessary qualifications.</p> <p>2 And I can explain what the procedure envisages. The 3 qualification requirements would be the existence of 4 a pipeline, the title to this pipeline or other legal 5 grounds; also equipment necessary for operation of such 6 pipeline, with the requisite legal documents; also the 7 existence of services for operation of the pipeline and 8 technical maintenance in support of this equipment, with 9 copies of documents establishing such services; the 10 existence of qualified technical managerial personnel 11 and specialists; also existence of plans of activities 12 and programmes for labour protection, for protection of 13 the environment and industrial safety; as well as 14 certificates of inspections carried out by the 15 territorial authorities, fire safety and industrial 16 safety. This is the full package of documents.</p> <p>17 When such documents are submitted, our agency, as 18 the licensing authority, would review this package. 19 Within 30 working days -- was the term established at 20 that time -- a licence would be issued or there will be 21 a motivated refusal to issue a licence.</p> <p>22 Q. Maybe you could slow down a little bit for the sake of 23 the interpreter.</p> <p>24 You mentioned 30 working days. Is that the usual 25 time for obtaining a licence?</p> <p style="text-align: center;">Page 38</p>	<p>11:50 1 are also services offered to third persons. Currently,</p> <p>2 in this area of natural monopolies, there are five 3 companies working in this area of natural monopolies.</p> <p>4 In order to work in the area of natural monopolies, 5 the subject in question, before he is entitled to carry 6 out such activities, he has to apply to be included into 7 the register of natural monopolies. After this person 8 has been included in the register of natural monopolies, 9 he is subject to a number of obligations and 10 restrictions, including the duty to provide financial 11 reporting twice a year, auditing, publishing of audit 12 reports, and the key element is to provide services in 13 compliance with the tariffs approved by the Agency for 14 Natural Monopolies.</p> <p>15 DR NACIMIENTO: Thank you. I have no further questions.</p> <p>16 THE CHAIRMAN: Thank you. We turn to claimants. 17 (11.52 am)</p> <p>18 Cross-examination by MR SMITH</p> <p>19 Q. Good morning, Mr Akhmetov. A couple of questions in 20 follow-up to your testimony.</p> <p>21 The first is: you indicated that there are presently 22 128 licences that have been issued by your agency for 23 the operation of main pipelines. Does that number 24 include companies that are involved in the service of 25 maintaining main pipelines?</p> <p style="text-align: center;">Page 40</p>

<p>11:52 1 A. This list includes companies that work with technical</p> <p>2 maintenance of main pipelines.</p> <p>3 Q. How many of the 128 companies, if you know, actually</p> <p>4 operate a main pipeline, rather than being in the</p> <p>5 service of maintaining main pipelines?</p> <p>6 A. I have a full list of entities which have licences for</p> <p>7 operation of main pipelines, with subdivision into kinds</p> <p>8 of activities, including operation proper, and another</p> <p>9 subdivision is providing main technical maintenance of</p> <p>10 main pipelines. But it is difficult for me at the</p> <p>11 moment to identify the respective numbers of companies,</p> <p>12 but I have the general list.</p> <p>13 Q. Would it be fair to say, sir, based on your</p> <p>14 recollection, that the majority of the companies of the</p> <p>15 128 you have identified are in the maintenance business</p> <p>16 and not in the operatorship business of main pipelines?</p> <p>17 A. Well, properly speaking, just glancing through this</p> <p>18 list, I can say that most companies are involved in</p> <p>19 technical maintenance of main pipelines.</p> <p>20 Q. How much does a licence for a main pipeline cost?</p> <p>21 A. In order to obtain a licence, the entity has to pay ten</p> <p>22 monthly calculated indices. So altogether it would be</p> <p>23 16,000 tenges, which is roughly equivalent to US\$110.</p> <p>24 Q. Thank you.</p> <p>25 You indicated that one of the things that</p> <p style="text-align: center;">Page 41</p>	<p>11:56 1 pipelines?</p> <p>2 A. I don't know details about the organisational work at</p> <p>3 other state bodies.</p> <p>4 Q. If an operator wanted to make an enquiry with the</p> <p>5 Government of Kazakhstan as to whether it required</p> <p>6 a licence for the operation of a main pipeline, to whom</p> <p>7 should it direct that enquiry?</p> <p>8 A. I am sorry, probably I didn't quite understand the</p> <p>9 question. I forgot part of it. Can you repeat it?</p> <p>10 Q. Sure. You indicate, both in your testimony today as</p> <p>11 well as in your witness statement, that when</p> <p>12 an applicant makes an application for a licence to</p> <p>13 conduct a main pipeline, one of the things that they</p> <p>14 must submit a document confirming is that they have</p> <p>15 a main pipeline. And my question to you is: if the</p> <p>16 applicant has a question regarding whether it needs to</p> <p>17 obtain a main pipeline licence for the operation of</p> <p>18 a pipeline, to whom within the Government of Kazakhstan</p> <p>19 should it direct its enquiry?</p> <p>20 A. First of all, I would like to clarify that when this</p> <p>21 entity submits the -- basically the fundamental</p> <p>22 documents and the key characteristics of the pipeline,</p> <p>23 as I mentioned, our agency is not qualified to classify</p> <p>24 or to establish whether this pipeline is main or not.</p> <p>25 But we assume that the legal entity, the operator,</p> <p style="text-align: center;">Page 43</p>
<p>11:54 1 an applicant must submit to your agency to obtain a main</p> <p>2 pipeline is a certificate of inspections. Who is</p> <p>3 responsible in Kazakhstan for inspecting main pipelines?</p> <p>4 A. Under a regulation issued by the government establishing</p> <p>5 the qualification requirements, issuance of such acts is</p> <p>6 carried out by the bodies responsible for industrial</p> <p>7 safety and environmental protection.</p> <p>8 Q. Is that body -- or at least one of those bodies -- known</p> <p>9 as the Ministry of Emergency Situations?</p> <p>10 A. Yes, currently it is this ministry and its territorial</p> <p>11 structures.</p> <p>12 Q. Would you think that the Ministry of Emergency</p> <p>13 Situations and its territorial structures would know</p> <p>14 whether a pipeline is or is not properly classified as</p> <p>15 a main pipeline?</p> <p>16 A. The Ministry of Emergency Situations, as far as</p> <p>17 I understand, works with industrial safety, and</p> <p>18 accordingly classifying pipelines is outside their area</p> <p>19 of competence, I believe. So they concentrate on safety</p> <p>20 issues.</p> <p>21 Q. You know, do you not, sir, that the Ministry of</p> <p>22 Emergency Situations has different groups that are</p> <p>23 responsible for conducting inspections of main</p> <p>24 pipelines, from groups within the same organisation that</p> <p>25 are responsible for conducting inspections of in-field</p> <p style="text-align: center;">Page 42</p>	<p>11:59 1 before -- and this is a common requirement -- before</p> <p>2 they started their activities, is obliged, before they</p> <p>3 start the licensed activities, to obtain a licence.</p> <p>4 If there are questions confirming the qualification</p> <p>5 of a pipeline, they may turn to competent bodies for</p> <p>6 explanations. Currently, the law -- there is a body</p> <p>7 charged to explain, interpret laws, to explain laws, and</p> <p>8 this is the General Prosecutor's Office.</p> <p>9 Once again, I can repeat that 128 licences, mostly</p> <p>10 issued to major large companies, and so far we have had</p> <p>11 no problems with classification of pipelines.</p> <p>12 Q. So is the answer to my question that the operator, if it</p> <p>13 has a question regarding whether it requires a main</p> <p>14 pipeline licence, it should direct that question to the</p> <p>15 General Prosecutor's Office?</p> <p>16 A. Yes, if they have such questions.</p> <p>17 MR SMITH: I have nothing further.</p> <p>18 THE CHAIRMAN: All right. That concludes the questioning.</p> <p>19 Any questions from the respondent's side?</p> <p>20 DR NACIMENTO: No questions.</p> <p>21 THE CHAIRMAN: My colleagues?</p> <p>22 Well, that was short but interesting. Thank you</p> <p>23 very much.</p> <p>24 (12.00 noon)</p> <p>25 THE CHAIRMAN: Alright. I am looking at our list of</p> <p style="text-align: center;">Page 44</p>

<p>12:01 1 remaining witnesses, including Dr Nacimiento's email of</p> <p>2 two days ago, and I take it that Mr Ongarbaev and</p> <p>3 Baymaganbetov are the two remaining witnesses?</p> <p>4 DR NACIMIENTO: That's right. Before we continue, could we</p> <p>5 have the timing?</p> <p>6 THE CHAIRMAN: To make sure that we get the correct timing,</p> <p>7 I will ask the secretary to check it against the record</p> <p>8 of the transcript, because that is the only safe way to</p> <p>9 make it -- so she will tell you as soon as possible.</p> <p>10 But in the meanwhile, I think we can already prepare for</p> <p>11 the next witness. Five minutes' break for that?</p> <p>12 DR NACIMIENTO: Yes, just a short break.</p> <p>13 THE CHAIRMAN: Okay, five minutes.</p> <p>14 (12.01 pm)</p> <p>15 (A short break)</p> <p>16 (12.10 pm)</p> <p>17 MR MIRBULAT ZARIFOVICH ONGARBAEV (called)</p> <p>18 (Evidence interpreted)</p> <p>19 THE CHAIRMAN: I welcome Mr Ongarbaev. Let me put this on</p> <p>20 to make sure we understand each other.</p> <p>21 Mr Ongarbaev, you know the procedure by now. Would</p> <p>22 you be kind enough to read out the witness declaration</p> <p>23 that you have in front of you?</p> <p>24 THE WITNESS: I am aware that in my testimony, I have to</p> <p>25 tell the truth and nothing but the truth. I am also</p> <p style="text-align: center;">Page 45</p>	<p>12:13 1 the Department of Subsoil Use. At that department</p> <p>2 I worked for a number of years, until 2012. The</p> <p>3 Department of Subsoil Use, being part of the State</p> <p>4 Committee for Investments, was subsequently transferred</p> <p>5 to the Ministry of Energy and Mineral Resources and then</p> <p>6 the Ministry of Oil and Gas.</p> <p>7 The Department of Subsoil Use, at this department my</p> <p>8 functions were monitoring and supervision of observance</p> <p>9 of the obligations by the subsoil users. I participated</p> <p>10 in monitoring of the subsoil use, preparing analyses and</p> <p>11 inspections or control functions of our department.</p> <p>12 In 2012 I moved to work at the National Geological</p> <p>13 Survey Company, which works with regional geological</p> <p>14 prospecting and evaluation of mineral deposits.</p> <p>15 Q. Thank you. Could you describe the procedure for the</p> <p>16 extension of subsoil use contracts?</p> <p>17 A. The procedure for extension on request of a subsoil user</p> <p>18 is regulated by a number of regulatory documents. When</p> <p>19 such request is received at the ministry or a competent</p> <p>20 body, it is reviewed by an expert commission of this</p> <p>21 competent body, which makes a decision on individual</p> <p>22 contracts or on recommendation to extend or not extend</p> <p>23 for certain specific reasons.</p> <p>24 When a decision to extend a contract is taken, the</p> <p>25 subsoil user is notified about this and he is invited to</p> <p style="text-align: center;">Page 47</p>
<p>12:10 1 aware that if I do not comply with this obligation,</p> <p>2 I may face severe legal consequences.</p> <p>3 THE CHAIRMAN: Thank you very much indeed.</p> <p>4 Respondent, please.</p> <p>5 (12.11 pm)</p> <p>6 Direct examination by DR NACIMIENTO</p> <p>7 Q. Mr Ongarbaev, you submitted a witness statement in this</p> <p>8 arbitration. Is there anything that you would like to</p> <p>9 add or amend?</p> <p>10 A. No, I don't want to change anything.</p> <p>11 Q. Could you please describe your educational and</p> <p>12 professional background and your current position?</p> <p>13 A. In 1977, after graduation from the Kazakh Polytechnical</p> <p>14 Institute, I graduated in the geological survey and</p> <p>15 prospecting for mineral resources. So I received my</p> <p>16 education in the subject of geological survey and</p> <p>17 prospecting for resources, and I got the qualification</p> <p>18 of geologist and mining engineer.</p> <p>19 After completion of my studies I worked for many</p> <p>20 years at geological entities and agencies of the</p> <p>21 Republic of Kazakhstan, including the western areas, the</p> <p>22 central areas, in the south of Kazakhstan; I also worked</p> <p>23 in the north and east of the Republic.</p> <p>24 In 1998 I entered state service, working for the</p> <p>25 State Committee for Investments, and I worked there at</p> <p style="text-align: center;">Page 46</p>	<p>12:16 1 draft an addendum to the contract which will be reviewed</p> <p>2 by the ministry. After the draft addendum is reviewed,</p> <p>3 the subsoil user is invited to a joint session of</p> <p>4 a working group reviewing the provisions of this</p> <p>5 addendum. At this joint meeting, a decision may be</p> <p>6 taken to -- most often is taken the decision to direct</p> <p>7 this project document to this or that state body for</p> <p>8 providing their reviews and conclusions, or expert</p> <p>9 examination.</p> <p>10 After the expert report is received, if there are</p> <p>11 any remarks on the part of other state entities, the</p> <p>12 subsoil user is notified about this and invited to</p> <p>13 review the remarks and amend the draft addendum</p> <p>14 accordingly. If such remarks are accepted, the subsoil</p> <p>15 user redrafts the addendum and submits it for review by</p> <p>16 the ministry again.</p> <p>17 The ministry or the competent body, having discussed</p> <p>18 this draft document, recommends it for signing. After</p> <p>19 the signature, when the draft is signed, this document</p> <p>20 is registered by the same competent body. After the</p> <p>21 registration at the competent body of this document, it</p> <p>22 is regarded to have entered into force.</p> <p>23 In cases where the subsoil user cannot and does not</p> <p>24 accept remarks made by other state entities in the</p> <p>25 process of review of the document, the draft, the</p> <p style="text-align: center;">Page 48</p>

<p>12:18 1 extension, may eventually not be granted because</p> <p>2 a priori a contract and all the addenda to it are</p> <p>3 agreements.</p> <p>4 Well, this is essentially the procedure.</p> <p>5 Q. Thank you.</p> <p>6 One last question regarding the Tolkyng fields.</p> <p>7 Could you describe the conditions of the Tolkyng fields</p> <p>8 in the summer of 2010?</p> <p>9 A. The condition of the field -- to describe the condition</p> <p>10 of the field in simple terms would be difficult because</p> <p>11 a field is a dynamic environment, and in time with its</p> <p>12 operation the properties, the parameters may change, and</p> <p>13 in order to understand the status at a certain point in</p> <p>14 time, one has to compare it to the previous period's</p> <p>15 stages.</p> <p>16 With respect to the Tolkyng field, as far as</p> <p>17 I remember, in 2008, already then an intensive</p> <p>18 development had started in 2008, as compared to the</p> <p>19 previous stages; also flooding, watering of the elements</p> <p>20 of gas condensate and oil elements of the field. By way</p> <p>21 of comparison I can say that at the period prior to the</p> <p>22 production period, flooding or watering is a very</p> <p>23 serious thing. So the extent of watering was 9 or</p> <p>24 10 grams per cubic metre. In 2008, the watering</p> <p>25 increased considerably: it was already not 10 but 60</p> <p style="text-align: center;">Page 49</p>	<p>12:23 1 the witness is the one who should read out documents to</p> <p>2 us.</p> <p>3 MR FLEURIET: You will see where this is headed in a moment,</p> <p>4 Mr Chairman. There are material differences in the</p> <p>5 English translation.</p> <p>6 THE CHAIRMAN: Okay, go ahead.</p> <p>7 MR FLEURIET: If you could please read paragraph 2.5 of your</p> <p>8 witness statement, the first two sentences.</p> <p>9 THE CHAIRMAN: From the Russian text, I take it?</p> <p>10 MR FLEURIET: From the Russian text, yes, sir.</p> <p>11 I'm sorry we're not getting the English translation.</p> <p>12 THE INTERPRETER: Sorry.</p> <p>13 A. "Inspections/audits conducted in July were not part of</p> <p>14 the audits that were routinely and regularly carried out</p> <p>15 on subsoil users. It was prompted by the fact that the</p> <p>16 financial police had informed that KPM and TNG had been</p> <p>17 in violation of the legislation of the Republic of</p> <p>18 Kazakhstan."</p> <p>19 Q. I noticed you refer to the financial police in the</p> <p>20 second sentence of what you just read. Are you aware</p> <p>21 that the English translation of your witness statement</p> <p>22 omits any reference to the financial police?</p> <p>23 A. No.</p> <p>24 Q. I am going to refer you now to the next -- I am not sure</p> <p>25 if it is the next page or not in the Russian, but it</p> <p style="text-align: center;">Page 51</p>
<p>12:21 1 approximately. In 2010, the watering of gas condensate</p> <p>2 elements was above 100 grams per cubic metre.</p> <p>3 This is a very short period of time for such</p> <p>4 dynamics in the changes of the situation of the field,</p> <p>5 so one could use this data to describe the general</p> <p>6 status of the field in 2010.</p> <p>7 DR NACIMIENTO: I have no further questions. Thank you.</p> <p>8 THE CHAIRMAN: Thank you.</p> <p>9 We come to claimants, please.</p> <p>10 (12.21 pm)</p> <p>11 Cross-examination by MR FLEURIET</p> <p>12 Q. Mr Ongarbaev, good morning. My name is Ken Fleuriet and</p> <p>13 I will be asking you questions on behalf of the</p> <p>14 claimants in this arbitration.</p> <p>15 Before we turn to the binder you have just been</p> <p>16 handed, do you have your witness statement in front of</p> <p>17 you?</p> <p>18 A. Yes.</p> <p>19 Q. Could you look with me, please, at paragraph 2.5 of your</p> <p>20 witness statement. Are you at paragraph 2.5?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Can I ask you, please, to read the first two sentences</p> <p>23 of paragraph 2.5 in your witness statement out loud.</p> <p>24 THE CHAIRMAN: I am sorry, my procedure is that if you want</p> <p>25 the text to be read, read it yourself. I don't think</p> <p style="text-align: center;">Page 50</p>	<p>12:25 1 should be about the next page in the Russian version.</p> <p>2 I don't know if the Tribunal has the Russian version as</p> <p>3 well. But on page 3 of the Russian version, do you see</p> <p>4 that your paragraphs are numbered on the left-hand side,</p> <p>5 and it says paragraph 2.8, then 2.9, then 2.10, and then</p> <p>6 after 2.10 there is another paragraph 2.9? Do you see</p> <p>7 that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Could you please read out that second paragraph 2.9,</p> <p>10 which I think should be paragraph 2.11?</p> <p>11 A. "The inspections conducted in July 2010 confirmed the</p> <p>12 fact that there were violations of licensing and</p> <p>13 contractual obligations on the part of Kazpolmunay and</p> <p>14 Tolkynneftegaz identified as a result of permanent</p> <p>15 continuous monitoring. Since there were no</p> <p>16 well-substantiated explanations and intention to</p> <p>17 eliminate the breaches, the Ministry of Oil and Gas was</p> <p>18 forced to terminate the contracts."</p> <p>19 Q. Are you aware that that entire paragraph does not appear</p> <p>20 in the English translation of your witness statement?</p> <p>21 A. No. I haven't seen the English text, since I don't know</p> <p>22 this language.</p> <p>23 Q. Let me ask you to turn to paragraph 5.2 of the Russian</p> <p>24 version of your statement. Can you please read out that</p> <p>25 one-sentence paragraph?</p> <p style="text-align: center;">Page 52</p>



<p>12:28 1 A. "I personally know about this alleged revocation and</p> <p>2 I think that the claimants confuse two very different</p> <p>3 issues."</p> <p>4 Q. You're not aware, sir, are you, that there is no</p> <p>5 paragraph 5.2 in the English translation of your witness</p> <p>6 statement?</p> <p>7 A. No, I don't know this.</p> <p>8 Q. Let me ask you now just to go down two paragraphs in the</p> <p>9 Russian version of your statement.</p> <p>10 THE CHAIRMAN: I am terribly sorry to interrupt, but just to</p> <p>11 make me understand. I do see a paragraph 5.2 in the</p> <p>12 English, but it looks different. It is longer and it is</p> <p>13 different.</p> <p>14 MR FLEURIET: It is different, and I believe all the</p> <p>15 paragraphs following on in section 5 should be</p> <p>16 renumbered.</p> <p>17 THE CHAIRMAN: One further down?</p> <p>18 MR FLEURIET: Yes.</p> <p>19 THE CHAIRMAN: I see. Okay.</p> <p>20 MR FLEURIET: I am just going to show you several more</p> <p>21 examples of this, sir. What is numbered as</p> <p>22 paragraph 5.4 of the Russian version of your witness</p> <p>23 statement, there is a very short question at the end of</p> <p>24 that paragraph. Could you please read that question</p> <p>25 out.</p> <p style="text-align: center;">Page 53</p>	<p>12:33 1 my question? That sentence does not appear in the</p> <p>2 Russian, does it, sir?</p> <p>3 A. There is no such sentence.</p> <p>4 Q. At the end of paragraph 6.4 of your statement, in the</p> <p>5 English version, there is a sentence at the very end of</p> <p>6 that paragraph that says:</p> <p>7 "This can be seen from requests to other subsoil</p> <p>8 users which I have attached in my witness statement as</p> <p>9 examples."</p> <p>10 Can you confirm, sir, that that sentence does not</p> <p>11 appear in the Russian version of your statement?</p> <p>12 A. There is no such sentence.</p> <p>13 Q. At the end of paragraph 7.2 of your witness statement,</p> <p>14 where you go through the extension process that you</p> <p>15 allege is required for extension of a contract, at the</p> <p>16 very end of that paragraph, just before 7.3, what is the</p> <p>17 last sentence in 7.2 of the Russian version, just before</p> <p>18 7.3?</p> <p>19 A. "The extension is considered in force since the moment</p> <p>20 of its registration with the competent body."</p> <p>21 Q. Are you aware, sir, that that sentence does not appear</p> <p>22 at all in the English version of your statement?</p> <p>23 A. No.</p> <p>24 Q. I am going to hand out to the Tribunal a corrected</p> <p>25 English version of the witness's statement, which</p> <p style="text-align: center;">Page 55</p>
<p>12:30 1 A. "So was there a waiver?"</p> <p>2 "So the waiver was there after all."</p> <p>3 THE INTERPRETER: With different intonation.</p> <p>4 Q. The question is: so was there a waiver, or did the</p> <p>5 waiver take place? That is the question, right?</p> <p>6 A. I am sorry, I probably don't understand the question.</p> <p>7 Q. I am just asking what the question is there in Russian.</p> <p>8 I think you gave two different answers.</p> <p>9 My understanding is that the Russian says, "So did</p> <p>10 the waiver take place?" And you are referring there to</p> <p>11 the waiver of the state's preemptive right; correct?</p> <p>12 A. Yes, this is my question.</p> <p>13 Q. Let me ask you now to move down to paragraph 5.6 of the</p> <p>14 Russian version of your statement. Could you just</p> <p>15 review that for a moment, please. (Pause)</p> <p>16 A. Yes, I have looked through it.</p> <p>17 Q. Now, in the English version of your witness statement</p> <p>18 there is an entire sentence that I don't believe appears</p> <p>19 in the Russian version. It appears right before the</p> <p>20 last sentence, and it says:</p> <p>21 "Therefore, the MEMR assumed that the Republic did</p> <p>22 not have a preemptive right in line with what I had been</p> <p>23 told by TNG."</p> <p>24 That sentence does not appear in the Russian version</p> <p>25 of your statement, does it, sir? (Pause) Can you answer</p> <p style="text-align: center;">Page 54</p>	<p>12:35 1 I believe is called for under the circumstances. There</p> <p>2 are material differences between the Russian version of</p> <p>3 his statement and the English version that has been</p> <p>4 submitted as evidence by the respondent in this</p> <p>5 proceeding.</p> <p>6 THE CHAIRMAN: I have one question on what you asked, and</p> <p>7 that is with reference to 5.4 of the Russian version,</p> <p>8 where you have this sentence with a question mark,</p> <p>9 Mr Fleuriet.</p> <p>10 MR FLEURIET: Yes, sir.</p> <p>11 THE CHAIRMAN: 5.4 of the Russian version, you pointed out</p> <p>12 the last sentence with a question mark, but I am not</p> <p>13 sure what you said about the English text in that</p> <p>14 regard. Is it missing?</p> <p>15 MR FLEURIET: We believe the entire text is missing in the</p> <p>16 English version, Mr Chairman.</p> <p>17 THE CHAIRMAN: I saw that there was no sentence with</p> <p>18 a question mark. But that entire sentence is missing,</p> <p>19 you say?</p> <p>20 MR FLEURIET: Yes, sir.</p> <p>21 THE CHAIRMAN: Okay.</p> <p>22 MR FLEURIET: In a number of cases throughout this witness</p> <p>23 statement, there are things in the Russian that do not</p> <p>24 appear in the English; and vice versa, there are</p> <p>25 a number of things in the English that do not appear in</p> <p style="text-align: center;">Page 56</p>

<p>12:36 1 the Russian. Unfortunately, in a number of cases, they</p> <p>2 go to critical issues in the case and about which this</p> <p>3 witness has testified.</p> <p>4 So with your permission, I am going to hand out</p> <p>5 a corrected English version of the statement for the</p> <p>6 Tribunal and for opposing counsel.</p> <p>7 THE CHAIRMAN: Yes, please do. And obviously respondent</p> <p>8 will be in a position to check that once they have it.</p> <p>9 (Handed)</p> <p>10 MR FLEURIET: Sir, do you have any familiarity with the</p> <p>11 English language? I would be happy to show you a copy</p> <p>12 of what I am handing out if you do.</p> <p>13 A. Well, as usual, I know some English, I can say "hello",</p> <p>14 "goodbye", but I can't read text.</p> <p>15 Q. I have just handed to the Tribunal -- I will just</p> <p>16 represent to you -- a copy of your witness statement in</p> <p>17 English which has literally dozens, if not hundreds, of</p> <p>18 words that are corrected. You can just look at the</p> <p>19 scope of what I am talking about, even if you can't read</p> <p>20 the English. Why don't you flip through that document</p> <p>21 for just a moment, that was just handed to you. (Pause)</p> <p>22 Do you know how this happened, sir?</p> <p>23 A. Well, as it happens, I assume that there must be some</p> <p>24 technical problems with translation. I can't really say</p> <p>25 what the corrections concern. I can't really say more</p> <p style="text-align: center;">Page 57</p>	<p>12:41 1 A. I don't recall I was saying anything about preemptive</p> <p>2 rights.</p> <p>3 Q. A moment ago I was asking you about section 5.1 of your</p> <p>4 statement, you read out the Russian, and I believe in</p> <p>5 the Russian, the last sentence of 5.1 in the incorrect</p> <p>6 English version, what should really be section 5.2 in</p> <p>7 the Russian, if you want to look at section 5.2 in the</p> <p>8 Russian, I believe that sentence says:</p> <p>9 "I have personal knowledge of this alleged</p> <p>10 revocation and it seems to me that the claimants confuse</p> <p>11 two very different issues."</p> <p>12 Do you remember that testimony of a moment ago?</p> <p>13 Please say "yes".</p> <p>14 A. Yes, I read it.</p> <p>15 Q. Let me ask you to turn to Exhibit C-134, which is behind</p> <p>16 tab 8 in your binder. It's correct, sir, is it not,</p> <p>17 that this is the document by which the appraisal</p> <p>18 commission of the MEMR expressly consented to the</p> <p>19 May 2003 transfer of shares from Gheso to Terra Raf?</p> <p>20 And I would refer you to the decision that is at the</p> <p>21 very end of the document. Is that correct?</p> <p>22 A. Yes, it is. I can see what this document says. But</p> <p>23 I did not really understand what you want me to testify</p> <p>24 concerning this document.</p> <p>25 Q. But you can see there that there is an express consent</p> <p style="text-align: center;">Page 59</p>
<p>12:39 1 than that.</p> <p>2 Q. Well, I am going to turn now to several of the issues in</p> <p>3 your statement. The only way I know to do this is to</p> <p>4 rely on the corrected version that I have just handed</p> <p>5 out. Insofar as there are material differences in the</p> <p>6 Russian, please feel free to explain those or point</p> <p>7 those out.</p> <p>8 THE CHAIRMAN: My colleague's question was: do we mark this</p> <p>9 as an exhibit? I told him: for the time being as</p> <p>10 a handout, but at some stage it may be good to give it</p> <p>11 an exhibit number, so that we know where to look at it</p> <p>12 in the record. But that may happen to other things as</p> <p>13 well.</p> <p>14 MR FLEURIET: Point well taken, yes. We will give you</p> <p>15 an exhibit number. Thank you.</p> <p>16 As you testified, I believe, a moment ago --</p> <p>17 actually, let me refer you back now to section 5 of your</p> <p>18 witness statement. As we know from the corrected</p> <p>19 English version of your statement, and as you testified</p> <p>20 a moment ago, you say you have personal knowledge of the</p> <p>21 preemptive rights issue in this case; correct?</p> <p>22 A. Yes. I described the process of extension, obtaining</p> <p>23 extension concerning preemptive [rights]. I don't</p> <p>24 recall ...</p> <p>25 THE INTERPRETER: Just a second, sir.</p> <p style="text-align: center;">Page 58</p>	<p>12:43 1 to the transfer of shares that was concluded on</p> <p>2 May 12th 2003, right?</p> <p>3 A. I would rather read what this document says.</p> <p>4 Q. Please.</p> <p>5 A. "[To allow] the transfer of 100% of the shares of ...</p> <p>6 Tolkyneftegaz ... in favour of ... Terra Raf ...</p> <p>7 [according to] the Contract for the sale [and] purchase</p> <p>8 of shares ... [of] May 13, 2003."</p> <p>9 Q. If you'll turn with me now to tab 14 in your binder,</p> <p>10 which is Exhibit C-415. This document is dated the very</p> <p>11 next day, February 21st 2007.</p> <p>12 This is the document by which the MEMR notified TNG</p> <p>13 of its approval of the transfer of shares, and again</p> <p>14 notes that the transfer occurred on May 12th 2003;</p> <p>15 correct?</p> <p>16 A. Yes, this is a confirmation that 100% of the shares were</p> <p>17 transferred in May 2003.</p> <p>18 Q. Thank you.</p> <p>19 Now, in paragraph 5.7, I believe it is, of the</p> <p>20 Russian version of your statement, you say that in 2008,</p> <p>21 "We", or the MEMR -- I believe the correct translation</p> <p>22 is "We", but:</p> <p>23 "... found out that Terra Raf had become registered</p> <p>24 as a shareholder in TNG in 2005."</p> <p>25 Correct?</p> <p style="text-align: center;">Page 60</p>

<p>12:46 1 A. That's what it says.</p> <p>2 Q. If I could just quickly refer you to Exhibit C-140,</p> <p>3 which is behind tab 9 of your binder. This is what you</p> <p>4 were referring to as occurring in 2008, right: this</p> <p>5 December 18th 2008 letter that informs TNG about the</p> <p>6 problem with this issue? Correct?</p> <p>7 A. I have to read it first.</p> <p>8 Q. Please do. I believe you'll find it in the first two</p> <p>9 sentences of the second paragraph.</p> <p>10 A. This document says that the ministry did not have the</p> <p>11 information that the transfer of the shareholding in</p> <p>12 this company actually took place already in 2005.</p> <p>13 Q. That's right. The ministry is talking there about</p> <p>14 May 16th 2005, right?</p> <p>15 A. That's right.</p> <p>16 Q. Sir, in fact it is not true, is it, that Terra Raf had</p> <p>17 become registered as a shareholder in TNG in 2005, as</p> <p>18 you say in your witness statement, and as the MEMR says</p> <p>19 here, is it?</p> <p>20 A. I am combining -- this document says that Tolkyneftegaz</p> <p>21 was registered in -- it says that the registration of</p> <p>22 Tolkyneftegaz took place on 16th May 2005, and after</p> <p>23 that, among the shareholders you could already find</p> <p>24 Terra Raf Trans Traiding Limited.</p> <p>25 Q. That's correct. That is what the document says, and</p> <p style="text-align: center;">Page 61</p>	<p>12:51 1 I believe is about on page 11. This is an extract from</p> <p>2 the register of securities holders; it's dated</p> <p>3 28th May 2003. Do you see that this also refers to the</p> <p>4 registration of Terra Raf Trans Traiding Limited?</p> <p>5 A. Yes, I do see.</p> <p>6 Q. On the very next page, at the back -- in the English</p> <p>7 version it's on the back of the same page -- do you see</p> <p>8 again this is the registration of Terra Raf Trans</p> <p>9 Traiding as at 28th May 2003?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Would you agree with me, sir, that this registration</p> <p>12 occurred in 2003, as reflected by these documents, which</p> <p>13 is well before the state gained the preemptive right in</p> <p>14 its December 2004 law?</p> <p>15 A. I did not understand the question exactly.</p> <p>16 Q. Would you agree with me, sir, that this registration</p> <p>17 occurred in 2003, as reflected by these documents, which</p> <p>18 is well before the state gained the preemptive right</p> <p>19 through its December 2004 law?</p> <p>20 A. The fact that the registration took place in 2003, yes.</p> <p>21 Q. Let me refer you to Exhibit C-625, which is tab 19 in</p> <p>22 your binder. Now, this document is dated December 18th</p> <p>23 2008, which is the very same date as Exhibit C-140 that</p> <p>24 we looked at earlier, which was the letter from the MEMR</p> <p>25 to TNG revoking preemptive rights waiver; correct?</p> <p style="text-align: center;">Page 63</p>
<p>12:49 1 that's what you say in your witness statement. And my</p> <p>2 question to you, sir, is: is it true that Terra Raf</p> <p>3 became registered as a shareholder in TNG in 2005?</p> <p>4 A. Well, this is not a joint stock company, and that is why</p> <p>5 this is not correct.</p> <p>6 Q. I want to make sure I understand your answer. I was not</p> <p>7 asking you about whether or not it is a joint stock</p> <p>8 company; I am asking you when Terra Raf became</p> <p>9 registered as a shareholder in TNG. It's not true, is</p> <p>10 it, that that occurred in 2005?</p> <p>11 A. This document says that the registration took place of</p> <p>12 Tolkyneftegaz in 2005. In 2005 the partnership with</p> <p>13 limited liability called Tolkyneftegaz was registered.</p> <p>14 Q. Let me ask you to turn now to tab 22 of your binder,</p> <p>15 which is Exhibit R-18. Unfortunately I don't believe</p> <p>16 there are page numbers on this document, but I have</p> <p>17 tried to mark a few of the pages I will be asking you</p> <p>18 about with red tabs.</p> <p>19 On the second page of this document, do you see --</p> <p>20 it is a register of transactions, and at the very bottom</p> <p>21 on the chart, under item number 13, it shows the</p> <p>22 registration of the Gheso/Terra Raf transfer as of</p> <p>23 May 28th 2003. Do you see that?</p> <p>24 A. I do see this line, yes.</p> <p>25 Q. Let me ask you to turn to the next red tab, which</p> <p style="text-align: center;">Page 62</p>	<p>12:55 1 A. Correct -- what shall I confirm as correct? I can see</p> <p>2 this document. What is -- the correctness of what do</p> <p>3 you want me to confirm?</p> <p>4 Q. The point is, sir, that on December 18th 2008 the</p> <p>5 government not only notified my clients of the</p> <p>6 revocation of this waiver; there was also a press</p> <p>7 release that went out on the Interfax news wire on the</p> <p>8 very same day. Correct?</p> <p>9 A. I can see it, yes.</p> <p>10 Q. It's talking here about the very same issue with regard</p> <p>11 to alleged violations in the procedure for registering</p> <p>12 documents; do you see that? Do you see the title of</p> <p>13 this article as well as the first paragraph?</p> <p>14 A. Yes, I do see it.</p> <p>15 Q. Then on what is the second page of the English version,</p> <p>16 there's a paragraph that begins with "However", and then</p> <p>17 the second sentence in English begins with "In</p> <p>18 particular". Do you see there there is the specific</p> <p>19 allegation that "the registration of the ... (LLP)</p> <p>20 Tolkyneftegaz took place on May 16, 2005"? This is the</p> <p>21 same issue we've been looking at, isn't it?</p> <p>22 THE INTERPRETER: Just a second, sir. I have to identify</p> <p>23 the relevant Russian text.</p> <p>24 MR FLEURIET: It's just a question as to whether this is the</p> <p>25 same preemptive rights waiver issue that we have been</p> <p style="text-align: center;">Page 64</p>

<p>12:57 1 looking at.</p> <p>2 What is the basis for this press release?</p> <p>3 A. There was no waiver of preemptive rights.</p> <p>4 Q. Do you see in the next paragraph, after the one I was</p> <p>5 just referring to, there is a quote that refers to the</p> <p>6 revocation of the state's waiver of preemptive rights?</p> <p>7 A. Yes, I am reading it. I can see that.</p> <p>8 Q. Two paragraphs above the two I was just asking you</p> <p>9 about, there is an allegation of forgery in this letter</p> <p>10 as well, isn't there?</p> <p>11 A. Yes, I have found this.</p> <p>12 Q. There's no evidence whatsoever for that allegation, is</p> <p>13 there?</p> <p>14 A. Well, this text by Interfax, I cannot be held liable or</p> <p>15 I cannot be asked to comment on the text coming from</p> <p>16 Interfax. This is not an official document.</p> <p>17 Q. Alright. Let's move on.</p> <p>18 Let me refer you now to Exhibit C-67, which is</p> <p>19 behind tab number 6 in your binder. Do you recall, sir,</p> <p>20 that this is the October 14th 2008 application by TNG to</p> <p>21 the MEMR for a two-year extension of the exploration</p> <p>22 period of contract 302?</p> <p>23 A. Yes, I can see it in front of me.</p> <p>24 Q. TNG received a positive recommendation on that extension</p> <p>25 from the expert commission of the MEMR on</p> <p style="text-align: center;">Page 65</p>	<p>13:04 1 enters into force after such document has been</p> <p>2 registered. And in this case there was a decision to</p> <p>3 recommend: you said that this decision had recommending</p> <p>4 character, this decision by a competent body. And after</p> <p>5 that, according to the process, the subsoil user must</p> <p>6 submit a draft addendum and this addendum shall be duly</p> <p>7 reviewed in the order established.</p> <p>8 But as I earlier said, not every addendum draft and</p> <p>9 not every proposal and not every decision, as well as</p> <p>10 any addendum to a contract, will be approved without</p> <p>11 agreement by the parties.</p> <p>12 Q. Can you show me in Exhibit R-163.1 where there is</p> <p>13 anything to suggest that this notification only has</p> <p>14 a recommending character? Can you point me to the</p> <p>15 specific language that indicates this is merely</p> <p>16 a recommendation?</p> <p>17 A. This document does not contain the words "recommend" or</p> <p>18 "recommendation".</p> <p>19 Q. Nor does this document contain any description of that</p> <p>20 further process that you allege was required, does it?</p> <p>21 A. That's correct; there is no description of such process.</p> <p>22 But whether this document makes any sense, as far as</p> <p>23 I know, Tolkynneftegaz/KPM by this time had already</p> <p>24 prepared a number of addenda drafts and -- a number of</p> <p>25 addenda. So the subsoil users did know about this</p> <p style="text-align: center;">Page 67</p>
<p>13:01 1 April 2nd 2009; do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. That is recorded, is it not, in Exhibit R-163.2, which</p> <p>4 is behind tab 24 of your binder? We've got a couple of</p> <p>5 different documents, I'm sorry, behind tab 24. I think</p> <p>6 it is the second document you see in English. Those are</p> <p>7 the minutes of the April 2nd meeting at which the</p> <p>8 decision is taken, right?</p> <p>9 A. That's right.</p> <p>10 Q. If you look back to the first document in English behind</p> <p>11 the same tab, R-163.1, you see that this is the</p> <p>12 notification to Tolkynneftegaz that the MEMR has</p> <p>13 resolved to:</p> <p>14 "... Permit extension of the exploration period by</p> <p>15 2 years until [March 30th] 2011.</p> <p>16 "Contract No. 302 dated [July 31] 1998, to be</p> <p>17 amended accordingly by 02 July 2009 ..."</p> <p>18 Right?</p> <p>19 A. That's right.</p> <p>20 Q. Would you agree with me, sir, that this represents</p> <p>21 Kazakhstan's agreement to extend this contract?</p> <p>22 A. No. As I stated earlier, when I detailed the process</p> <p>23 for amendments of contracts, all amendments, all</p> <p>24 additions and agreed decisions shall be signed and</p> <p>25 registered with the competent body. Each document</p> <p style="text-align: center;">Page 66</p>	<p>13:06 1 procedure, and this procedure is also described in legislative</p> <p>2 acts.</p> <p>3 Q. Let me ask you now to turn to Exhibit C-7, behind tab 4</p> <p>4 of your binder. This is the Ministry of Oil's</p> <p>5 notification to TNG, dated July 14th 2010, of the</p> <p>6 infringement of obligations under contract number 302.</p> <p>7 I would ask you to look at the first sentence, which</p> <p>8 refers to the "unscheduled inspections" that were</p> <p>9 carried out in relation to contract no. 302 that began</p> <p>10 on or about June 24th 2010. Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Why is contract 302 being inspected and TNG being</p> <p>13 notified of alleged infringements in July 2010 if the</p> <p>14 ministry did not consider that contract 302 had been</p> <p>15 extended in the spring of 2009?</p> <p>16 A. In the spring of 2009 it was decided to allow the</p> <p>17 extension. Accordingly, Tolkynneftegaz submitted</p> <p>18 a draft addendum. And since this draft addendum by this</p> <p>19 time had not been signed yet, and there was no order to</p> <p>20 consider it void due to the expiration of the deadline,</p> <p>21 and since the commission which was carrying out the</p> <p>22 inspection in July 2010, this commission carried out the</p> <p>23 inspection of the activities of TNG, including its</p> <p>24 activities under the other contract and this contract as</p> <p>25 well, and this notice was part of the general procedure</p> <p>for monitoring and control of the subsoil user and</p> <p style="text-align: center;">Page 68</p>



<p>13:09 1 subsoil usage, subsoil use, as part of the whole</p> <p>2 procedure.</p> <p>3 Q. Well, if it's not void and it's not extended, what is</p> <p>4 it?</p> <p>5 A. What is it in respect of the contract validity? Well,</p> <p>6 the matter of its extension was not completely resolved</p> <p>7 at this time. So it's not important for the inspection.</p> <p>8 At the time of the inspection, it was not important.</p> <p>9 The status of the contract was not important for those</p> <p>10 carrying out the inspection. They were inspecting the</p> <p>11 activities of the company during the timeframe or during</p> <p>12 the period not only 2009 and 2010; they also looked at</p> <p>13 the company's activities in 2008 and 2007. We are</p> <p>14 speaking about violations which took place not after</p> <p>15 30th March 2009.</p> <p>16 Q. If you will turn with me now to tab 5 in your binder,</p> <p>17 which is Exhibit C-40. This is the notification of the</p> <p>18 termination of contract 302. And again the point, sir,</p> <p>19 is Kazakhstan is certainly acting here, in July 2010, as</p> <p>20 if contract 302 had been extended and was still</p> <p>21 an operative agreement; correct?</p> <p>22 A. I do not have this order.</p> <p>23 Q. I believe it's behind tab 5 in your binder,</p> <p>24 Exhibit C-40.</p> <p>25 Would you agree with me, sir, that the Government of</p> <p style="text-align: center;">Page 69</p>	<p>13:13 1 KazMunaiGas's subsidiary TenizMunaiGas, right?</p> <p>2 A. Yes, they concluded contracts with the trust manager,</p> <p>3 the company which is carrying out trust management.</p> <p>4 Q. Why did the transfer of territories need to take place</p> <p>5 swiftly in order to maintain the fields if all the same</p> <p>6 people, all the same workers just stayed there? That</p> <p>7 doesn't make a lot of sense, does it? Nothing changed</p> <p>8 on the field, did it?</p> <p>9 A. I'm sorry, I didn't understand the question. Can you</p> <p>10 say it again?</p> <p>11 Q. All that happened was the change in ownership, with the</p> <p>12 transfer to trust management, but all the employees</p> <p>13 stayed on the field and kept working. So I'm having</p> <p>14 trouble understanding why you say that the transfer</p> <p>15 needed to take place swiftly in order to maintain the</p> <p>16 fields. All the same people stayed there and kept</p> <p>17 working, right?</p> <p>18 A. Yes.</p> <p>19 Q. With respect to technological problems and the flooding</p> <p>20 you referred to earlier, I think you say here, in</p> <p>21 paragraph 4.2, that there was "intensive flooding"</p> <p>22 during the initial phase. Do you see that?</p> <p>23 A. Yes. The flooding started in 2008.</p> <p>24 Q. What do you mean by "intensive" -- I'm sorry, I was</p> <p>25 referring to -- in the English it says "intensive</p> <p style="text-align: center;">Page 71</p>
<p>13:11 1 Kazakhstan is here acting as if the contract had been</p> <p>2 extended? Sorry, it is Exhibit C-40.</p> <p>3 A. C-40 is a certificate of registration from 2005,</p> <p>4 isn't it?</p> <p>5 Q. I'm sorry. It is behind tab 2 in your binder and it is</p> <p>6 Exhibit C-5. I stand corrected.</p> <p>7 Here the government is terminating contract 302 in</p> <p>8 July 2010, right?</p> <p>9 A. That's right. This is notification of termination of</p> <p>10 the contract.</p> <p>11 Q. Now, in your witness statement and in your direct</p> <p>12 examination you talk some about the condition of the</p> <p>13 fields and -- actually, let me give you a specific</p> <p>14 reference. If you'll look at paragraph 4.2 of your</p> <p>15 statement, the first sentence, you say:</p> <p>16 "The transfer of the territories needed to take</p> <p>17 place swiftly in order to maintain the fields."</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware that about 99% of the personnel on the</p> <p>21 fields were Kazakh, who had no intention to and in fact</p> <p>22 did not leave their jobs?</p> <p>23 A. I know that the personnel of the company still is</p> <p>24 working there.</p> <p>25 Q. Right. They simply resigned their work contracts with</p> <p style="text-align: center;">Page 70</p>	<p>13:16 1 extraction of hydrocarbons", which led to "intensive</p> <p>2 flooding of the field".</p> <p>3 My question is: what do you mean by "intensive</p> <p>4 extraction of hydrocarbons"? Are you comparing the</p> <p>5 production levels to the development plan that was</p> <p>6 approved by the ministry?</p> <p>7 A. No, in this case I am not comparing, just observing the</p> <p>8 fact that there was initially an intensive extraction</p> <p>9 from the very start of production. And as it becomes</p> <p>10 clear to me now, this was incorrect, barbaric, I would</p> <p>11 say, treatment of the field.</p> <p>12 Q. What was happening at the field was approved by the</p> <p>13 ministry and in fact was less intensive production than</p> <p>14 was agreed with the ministry; isn't that right?</p> <p>15 A. I know that the project was reviewed by the Central</p> <p>16 Commission for Development of Hydrocarbon Deposits, and</p> <p>17 with your permission I would like to explain the</p> <p>18 situation with these projects, their approval, with your</p> <p>19 permission.</p> <p>20 Q. Well, your counsel can come back to it on re-direct.</p> <p>21 Let me ask you this: TenizMunaiGas has not done</p> <p>22 anything to address any of these issues since taking</p> <p>23 over, has it?</p> <p>24 A. How should I understand this question? To resolve these</p> <p>25 issues? To address, to correct the situation?</p> <p style="text-align: center;">Page 72</p>

<p>13:19 1 Q. I just would like an answer to my question. I mean, you</p> <p>2 seem to make a big point of needing new ownership here.</p> <p>3 But my question to you is: TenizMunaiGas has not done</p> <p>4 anything to address any of these issues since taking</p> <p>5 over, has it?</p> <p>6 A. What issues? Do you mean the flooding?</p> <p>7 Q. The flooding or any other operational issues that you</p> <p>8 claim existed in the middle of 2010.</p> <p>9 A. I can't say exactly what is currently being done by</p> <p>10 KazMunaiTeniz because I am no longer working at the</p> <p>11 ministry. But since it had been handed over to trust</p> <p>12 management, the essence was to maintain the field in its</p> <p>13 condition as it was.</p> <p>14 In order to correct the situation, to improve the</p> <p>15 situation with flooding and deterioration of the</p> <p>16 quality, one has to do a lot of work, and major</p> <p>17 investments. Unfortunately I think the fact that this</p> <p>18 question is not finally resolved prevents this.</p> <p>19 The field, I can also add, why it was essential to</p> <p>20 transfer it promptly, the prompt transfer -- we have</p> <p>21 been talking about this -- depending on the situation of</p> <p>22 development, production, the hydrocarbons and the field cannot</p> <p>23 be</p> <p>24 just stopped as it is and resume production in a year or</p> <p>25 two -- there will be different quality already; the field itself, in</p> <p>simplified terms,</p> <p>geologically.</p> <p style="text-align: center;">Page 73</p>	<p>13:23 1 project.</p> <p>2 After this project is reviewed by the subsoil user,</p> <p>3 it is submitted for review by the Central Commission for</p> <p>4 Development. The commission itself reviews the project</p> <p>5 as such, as it is, with regards to its technical</p> <p>6 elements, and not more than that. The members of the</p> <p>7 Central Commission may not have the entire information</p> <p>8 concerning the field and its status, geological status.</p> <p>9 So I think that in this case TNG is confusing</p> <p>10 everyone by not providing the exhaustive information.</p> <p>11 And the situation of 2008 now becomes more clear to me</p> <p>12 because 2008 was the year of high prices for</p> <p>13 hydrocarbons and the company for a number of years has</p> <p>14 made attempts to sell the assets of the field, and in this case the</p> <p>15 high yield, the high production with high prices, is</p> <p>16 a good, attractive moment for potential buyers reviewing</p> <p>17 acquisition of the assets. I think this is one element.</p> <p>18 And then the company, its management did not take care</p> <p>19 of the field. So we are not talking about this; this</p> <p>20 was probably something done in the last resort.</p> <p>21 So I think this was the situation at the field.</p> <p>22 After transfer to the trust management, it is much more</p> <p>23 difficult to address the situation than to prevent it.</p> <p>24 --And the developers do understand it.- so to correct the situation</p> <p>25 at the</p> <p>field is much more difficult than to prevent it. These</p> <p style="text-align: center;">Page 75</p>
<p>13:21 1 Now, you have mentioned already that there is</p> <p>2 a workforce and there are social issues --</p> <p>3 MR FLEURIET: Can I stop you there, because my time is very</p> <p>4 limited. Your counsel can take that up with you on</p> <p>5 re-direct. I have no further questions.</p> <p>6 THE CHAIRMAN: How many questions would you have? Because</p> <p>7 we are coming close to --</p> <p>8 DR NACIMIENTO: Not many.</p> <p>9 THE CHAIRMAN: Okay. Go ahead.</p> <p>10 (1.22 pm)</p> <p>11 Re-direct examination by DR NACIMIENTO</p> <p>12 Q. Mr Ongarbaev, one of the questions referred to the</p> <p>13 increase of production and the subsequent flooding</p> <p>14 caused by this increase. You were just cut off when you</p> <p>15 were going to explain that the project was reviewed by</p> <p>16 the Central Commission for Development, and I believe</p> <p>17 you were going to explain the allowed level of</p> <p>18 production. Can you elaborate on this?</p> <p>19 A. Yes. The fact is that development projects are</p> <p>20 developed by project companies. The project itself was</p> <p>21 not prepared by TNG. In this case the designer may not</p> <p>22 have the entire information of the field, and he</p> <p>23 prepares a project proceeding from the technical</p> <p>24 specifications provided by the subsoil user. On the basis</p> <p>25 of such specifications, the designer prepares the</p> <p style="text-align: center;">Page 74</p>	<p>13:26 1 are natural geological processes that not always can be</p> <p>2 managed.</p> <p>3 Q. Earlier in your testimony you described the treatment of</p> <p>4 the field as "barbaric". What do you mean by this?</p> <p>5 A. The ignoring of the field in its entirety. Barbaric</p> <p>6 treatment was manifested in inefficient use, because</p> <p>7 this is a complex hydrodynamic system and one can't</p> <p>8 treat them in this way. They require gradual</p> <p>9 extraction, production of hydrocarbons.</p> <p>10 The flooding takes place because this is</p> <p>11 an environment which cannot be separated; there is only</p> <p>12 a provisional borderline between water and oil that can</p> <p>13 be drawn. If oil is extracted, water comes to the</p> <p>14 surface and it closes access for the hydrocarbons to the</p> <p>15 wells, roughly in this way, since water is heavier than</p> <p>16 oil.</p> <p>17 And barbaric treatment in the sense that the subsoil</p> <p>18 user, this company would sell the field and they don't</p> <p>19 care about its future; whereas our competent bodies, as</p> <p>20 the owners of the subsoil, of course should be worried</p> <p>21 about this.</p> <p>22 Q. Last question: do you confirm your Russian version of</p> <p>23 the witness statement as the true version of your</p> <p>24 written statement?</p> <p>25 A. Yes. I confirmed it at the start.</p> <p style="text-align: center;">Page 76</p>

<p>13:28 1 DR NACIMIENTO: Mr Chairman, I have no further questions to</p> <p>2 the witness but I have one comment regarding the amended</p> <p>3 translation, and it is a very brief one.</p> <p>4 THE CHAIRMAN: Go ahead.</p> <p>5 DR NACIMIENTO: So we have had just a quick scan through the</p> <p>6 document, and we will come back to this in more detail,</p> <p>7 but what I can say right now is that many of the alleged</p> <p>8 differences are simply differences in translation. It</p> <p>9 might be a translation of dubious quality, yes, but</p> <p>10 I submit that there are no significant differences</p> <p>11 between the Russian and the English version.</p> <p>12 THE CHAIRMAN: I think we had taken note of that. There is</p> <p>13 sufficient time in this procedure to perhaps even try to</p> <p>14 agree on an English translation. On the other hand, you</p> <p>15 may want -- for instance, in the post-hearing brief --</p> <p>16 to point out what is wrong in the corrections, if there</p> <p>17 are faults again. We are not the experts here to really</p> <p>18 find that out right now. But we take note of that.</p> <p>19 MR FLEURIET: I believe the document speaks for itself in</p> <p>20 terms of everything that is missing in the various</p> <p>21 versions. But I will just note, in answer to your</p> <p>22 question earlier, that will become Exhibit C-720.</p> <p>23 THE CHAIRMAN: Okay, thank you.</p> <p>24 Alright. I still have to ask my colleagues: do they</p> <p>25 want to ask any questions?</p> <p style="text-align: center;">Page 77</p>	<p>14:43 1 severe legal consequences.</p> <p>2 THE CHAIRMAN: Thank you very much.</p> <p>3 Respondent, please.</p> <p>4 DR NACIMIENTO: Thank you.</p> <p>5 (2.43 pm)</p> <p>6 Direct examination by DR NACIMIENTO</p> <p>7 Q. Mr Baymaganbetov, you have submitted a witness statement</p> <p>8 in this arbitration. Is there anything that you would</p> <p>9 like to add or amend?</p> <p>10 A. No, I fully agree to -- I fully support what I have</p> <p>11 written in this document. No changes.</p> <p>12 Q. Could you please describe the function of the department</p> <p>13 of forensic examination of the Ministry of Justice?</p> <p>14 A. The department, centre of forensic examination, was</p> <p>15 built based on the decree of the Government of</p> <p>16 Kazakhstan and is authorised as the body within</p> <p>17 Ministry of Justice, and the Ministry of Justice in its</p> <p>18 turn is an executive body in the Government of</p> <p>19 Kazakhstan.</p> <p>20 And the laboratory of forensic expert examination</p> <p>21 for Astana territory-wise is the regional centre or</p> <p>22 regional body of this centre of expert examinations, and</p> <p>23 the centre of expert examinations has the following</p> <p>24 functions: carrying out expert examinations for the</p> <p>25 purpose of civil, criminal and administrative</p> <p style="text-align: center;">Page 79</p>
<p>13:30 1 MR HAIGH: No, thank you.</p> <p>2 THE CHAIRMAN: Shaking head. Shaking head as well, Sergey?</p> <p>3 I will shake my head as well.</p> <p>4 Alright. That brings us to the still proper lunch</p> <p>5 break. We will have the usual one hour. Then we have</p> <p>6 one more witness to go, as we know. And on the agenda</p> <p>7 still, the discussion of the further procedure, which</p> <p>8 should not take very long, but whatever you have in that</p> <p>9 regard. It will be regarding post-hearing briefs</p> <p>10 particularly.</p> <p>11 Alright. Have a good lunch. See you at 2.30.</p> <p>12 (1.30 pm)</p> <p>13 (The short adjournment)</p> <p>14 (2.40 pm)</p> <p>15 MR SALAMAT SARTEVICH BAYMAGANBETOV (called)</p> <p>16 (Evidence interpreted)</p> <p>17 THE CHAIRMAN: We come to our last session of this hearing,</p> <p>18 I take it, and we welcome Mr Baymaganbetov. I'm sorry,</p> <p>19 I am struggling with your name. It is even more</p> <p>20 complicated than Bockstiegel for Russians, I suppose.</p> <p>21 Welcome, sir. You know how things work here. So</p> <p>22 would you be kind enough to read out the declaration?</p> <p>23 THE WITNESS: I am aware that in my testimony I have to tell</p> <p>24 the truth and nothing but the truth. I am also aware</p> <p>25 that if I do not comply with this obligation, I may face</p> <p style="text-align: center;">Page 78</p>	<p>14:45 1 litigation.</p> <p>2 Anything more you wanted me to detail?</p> <p>3 Q. No, that is fine. Could you describe your educational</p> <p>4 and professional background?</p> <p>5 A. In 2000 I graduated from European Asian National</p> <p>6 University in the city of Astana, and the diploma I have</p> <p>7 is in the field of forensic examination and construction</p> <p>8 trade analysis, and I became a construction engineer.</p> <p>9 Prior to that, I also worked for construction companies.</p> <p>10 In 2002 I started work at the centre of forensic</p> <p>11 expert examinations, initially as a trainee, and after</p> <p>12 taking the internship between three and nine months --</p> <p>13 that is what it normally takes -- I qualified, I passed</p> <p>14 the exams and qualified in the field of the basic</p> <p>15 knowledge of law concerning the judicial expert</p> <p>16 examinations, and in my own field, expert of</p> <p>17 construction field.</p> <p>18 Having passed these exams, I have obtained the title</p> <p>19 with the degree of forensic expert, and I have the</p> <p>20 rights to carry out forensic expert [examinations] in</p> <p>21 the judicial field, in the construction field, expert</p> <p>22 examinations of buildings and constructions in the</p> <p>23 judicial field, expert examinations of the goods -- of</p> <p>24 the constructions and buildings as goods, and the third</p> <p>25 kind of [examinations] that I can carry out is</p> <p style="text-align: center;">Page 80</p>



<p>14:47 1 construction and economic expert examinations.</p> <p>2 Having passed these exams, I became -- having passed</p> <p>3 exams for a degree, I became the senior expert and was</p> <p>4 registered as one of the forensic experts of the</p> <p>5 Republic of Kazakhstan in the register. And several</p> <p>6 years later, which is what it takes, certain experience,</p> <p>7 two or three years, in the course of my work, after</p> <p>8 additional training that I obtained, I was appointed as</p> <p>9 a leading expert, and in 2006 I became the head expert</p> <p>10 or chief expert.</p> <p>11 That is about it.</p> <p>12 Q. Thank you.</p> <p>13 We heard last week claimant's witness Mr Romanosov</p> <p>14 say with reference to you -- and I am quoting here from</p> <p>15 the transcript; this is Day 2, page 101, lines 5-11:</p> <p>16 "He made his report on the basis of some educational</p> <p>17 literature that he read, and he did not even take the</p> <p>18 trouble to visit the field itself before producing such</p> <p>19 an important document as an expert report. He did not</p> <p>20 deem it necessary to visit the field and see it with his</p> <p>21 own eyes."</p> <p>22 Why did you not visit the field, Mr Baymaganbetov?</p> <p>23 A. I believe we are speaking about the expert report,</p> <p>24 [aren't] you?</p> <p>25 Q. That's right.</p> <p style="text-align: center;">Page 81</p>	<p>14:51 1 the field.</p> <p>2 So I made a documentary expert review because I had</p> <p>3 the design project; I also had the act of acceptance for</p> <p>4 this oil pipeline for operation. And the acceptance</p> <p>5 commission confirmed in this document that this pipeline</p> <p>6 was to be considered accepted for</p> <p>7 operation, and it was executed in accordance with the</p> <p>8 design for such pipeline, and therefore it was clear</p> <p>9 that there were no deviations from the design. And</p> <p>10 accordingly, I used these documents as the basis.</p> <p>11 Q. Thank you.</p> <p>12 We note that in your expert report -- and that is</p> <p>13 Exhibit C-110 in this case -- you rely on two SNIps: it</p> <p>14 is SNIp 2.05.06-85 and SNIp III-42/80. Why did you rely</p> <p>15 on these particular SNIps for the classification of this</p> <p>16 pipeline?</p> <p>17 A. Since the pipeline is an engineering construction, it</p> <p>18 means that it was built according to standards in the</p> <p>19 construction field, and the main documents governing the</p> <p>20 design and construction of pipelines are so-called</p> <p>21 SNIps. And SNIp number III, [III-42/80] and SNIp</p> <p>22 2.05.06-85, these were two SNIps which were valid at the</p> <p>23 moment and had the governance accordingly.</p> <p>24 I also want to clarify that it was not only these</p> <p>25 SNIps but also other SNIps developed in all areas of</p> <p style="text-align: center;">Page 83</p>
<p>14:49 1 A. Well, the expert report has been executed by myself</p> <p>2 based on the resolution of a judicial body, of</p> <p>3 an enforcement authority, financial police in this case,</p> <p>4 Inspector Investigator Rakhimov. And based on the</p> <p>5 questions that he posed in front of me whether the</p> <p>6 pipeline between treatment facility Borankol until</p> <p>7 commodity and raw material base at Opornaya railway</p> <p>8 station -- the question was about this pipeline, and he</p> <p>9 produced certain documentations: the order about the</p> <p>10 expert inspection; the design project, Borankol TSB; the</p> <p>11 act of the working commission on acceptance for</p> <p>12 production of the oil pipeline of the length of</p> <p>13 17 kilometres between Borankol until the commodities and</p> <p>14 raw materials base; and two SNIps for trunk pipelines,</p> <p>15 as hard copies.</p> <p>16 Having studied, having reviewed all the documents</p> <p>17 that I had in front of me, I produced an expert report</p> <p>18 and concluded accordingly that this pipeline, Borankol</p> <p>19 Opornaya until commodities base, is a trunk pipeline.</p> <p>20 Yes, and Mr Romanosov is correct saying that I never</p> <p>21 visited the field, because the documents provided to me</p> <p>22 were fully sufficient in order to make an expert report.</p> <p>23 And this was a pipeline, as you know, and a pipeline is</p> <p>24 a linear construction of a certain length, of certain</p> <p>25 technical specifications, and there was no need to go to</p> <p style="text-align: center;">Page 82</p>	<p>14:54 1 industry for construction of administrative buildings,</p> <p>2 civil purpose buildings. These SNIps belong to the</p> <p>3 state governance regulatory acts and, according to the</p> <p>4 Law on Architectural Activities of Kazakhstan, these</p> <p>5 SNIps are among the regulatory acts or normative acts of</p> <p>6 Kazakhstan and thus are mandatory: they have to be</p> <p>7 applied by all the operators, regardless of the type of</p> <p>8 property, when constructions are carried out for</p> <p>9 buildings or facilities of civil, administrative,</p> <p>10 industrial kind of facilities, and any deviations and</p> <p>11 any failure to observe these regulations in SNIps, they</p> <p>12 will result in corresponding liabilities.</p> <p>13 I used these SNIps as the basis in my expert review,</p> <p>14 and having compared the technical specifications and the</p> <p>15 features of this particular working design, Borankol to</p> <p>16 commodities base, I concluded that this particular</p> <p>17 working design, and the pipeline itself, fall under the</p> <p>18 scope of a trunk pipeline according to these SNIps</p> <p>19 I just named.</p> <p>20 Q. Are SNIps part of the available information?</p> <p>21 A. Yes, they are publicly available. They are developed by</p> <p>22 scientific research institutes, and they are</p> <p>23 approved -- earlier they were approved by the committee</p> <p>24 for construction, and nowadays it is by the Agency for</p> <p>25 Construction.</p> <p style="text-align: center;">Page 84</p>



<p>14:56 1 I also want to add that these SNIps have been</p> <p>2 developed and they apply as mandatory regulations to</p> <p>3 everyone because they ensure and they safeguard the</p> <p>4 safety of life and of the environment of people, and the</p> <p>5 environment safety as well. So SNIps have been</p> <p>6 developed for all fields of industry.</p> <p>7 Q. Regarding the SNIp for trunk pipelines, is there any</p> <p>8 minimum diameter or length requirement?</p> <p>9 A. In these SNIps on main pipelines, there are</p> <p>10 no minimum requirements, but there is a fourth type of</p> <p>11 pipelines which are 300 millimetres or less. And the maximum</p> <p>12 size, up to 1,400, this is for the main pipelines. So</p> <p>13 these largest would be qualified as the first type or</p> <p>14 first class of pipelines. As for the smallest, the</p> <p>15 tiniest, the sizes are reflected in the state standard for main</p> <p>16 pipelines called "Steel Pipes and Trunk Pipelines". And in these SNIps</p> <p>17 they are not mentioned.</p> <p>17 DR NACIMIENTO: Thank you. I have no further questions.</p> <p>18 I am sorry, you wanted to add something?</p> <p>19 A. These particular SNIps did not -- just a last sentence.</p> <p>20 These particular SNIps did not contain minimum diameter.</p> <p>21 DR NACIMIENTO: Thank you. No further questions.</p> <p>22 THE CHAIRMAN: Thank you very much.</p> <p>23 We come to cross-examination by the claimant,</p> <p>24 please.</p> <p>25 (2.58 pm)</p> <p style="text-align: center;">Page 85</p>	<p>15:01 1 statement?</p> <p>2 A. I can't say that. It's not -- it's beyond my functions.</p> <p>3 Q. Let me ask you if you'll look at tab 8 of the binder</p> <p>4 that we put in front of you. You'll see behind each tab</p> <p>5 an English translation and then the Russian version of</p> <p>6 the document. So if you would refer to the Russian.</p> <p>7 This is claimant's Exhibit 110, which is your expert</p> <p>8 evidence examination of the KPM pipeline segment which</p> <p>9 has been produced in the case.</p> <p>10 I will just ask you, sir, to confirm that your</p> <p>11 forensic examination was solely based on research that</p> <p>12 you carried out based on construction norms, and on the</p> <p>13 basis of technical specifications; correct?</p> <p>14 A. This report was prepared by me.</p> <p>15 Q. My question to you, if you'll look at the last paragraph</p> <p>16 on the last page before "Conclusions", I simply want you</p> <p>17 to confirm that your analysis was solely based on -- and</p> <p>18 I'm quoting:</p> <p>19 "... on the basis of the research carried out</p> <p>20 according to construction norms, on the basis of</p> <p>21 technical specification of the pipeline ..."</p> <p>22 Correct?</p> <p>23 A. This was page number 5, yes. Yes, proceeding from the</p> <p>24 construction norms and technical specifications --</p> <p>25 Q. You were not aware, correct --</p> <p style="text-align: center;">Page 87</p>
<p>14:58 1 Cross-examination by MR SMITH</p> <p>2 Q. I would like to confirm that prior to your forensic</p> <p>3 examination of the KPM pipeline, you had never before in</p> <p>4 your career classified a pipeline; correct?</p> <p>5 A. Before KPM, there were pipelines of Tolkynneftegaz. So</p> <p>6 I carried out expert examinations -- that is,</p> <p>7 I conducted or had conducted an expert examination of</p> <p>8 the pipelines of TNG.</p> <p>9 Q. When did you conduct that examination?</p> <p>10 A. The expert examination that I had carried out, that was</p> <p>11 in December 2008 for the gas pipelines, there were two</p> <p>12 expert reports, and one expert report on condensate</p> <p>13 pipeline, also situated at the examined fields, Borankol</p> <p>14 and ...</p> <p>15 Q. Who asked you to conduct those forensic examinations?</p> <p>16 A. Not asked actually. First of all, there was a decision</p> <p>17 made by the body of financial police, and such decision</p> <p>18 made by such a body under the existing legislation is</p> <p>19 mandatory for performance by the expert examination</p> <p>20 body. The decision was made, as far as I remember, at</p> <p>21 the [pre-investigation] examination by Mr Turganbayev.</p> <p>22 Q. If you know the answer, do you know why the forensic</p> <p>23 examinations that you have just testified about with</p> <p>24 respect to TNG have not been produced by the respondent</p> <p>25 in this case and are nowhere referred to in your witness</p> <p style="text-align: center;">Page 86</p>	<p>15:03 1 THE CHAIRMAN: I am sorry, you have to wait a little bit.</p> <p>2 Go ahead.</p> <p>3 A. ... that the pipeline to the commodity and raw material</p> <p>4 base of Opornaya station is ...</p> <p>5 MR SMITH: Can I have a direct answer to my question? My</p> <p>6 question was: the forensic expert report that you</p> <p>7 prepared was based solely on research carried out</p> <p>8 according to construction norms, on the basis of</p> <p>9 technical specifications for the pipeline under</p> <p>10 examination; correct?</p> <p>11 A. No, no. The expert report was carried out on the basis</p> <p>12 of a study of the working project for construction, and</p> <p>13 I checked this against the existing construction</p> <p>14 regulations and norms and the act on commissioning of</p> <p>15 the facility. So the specifications that I used were</p> <p>16 taken from the project and from the act of the working</p> <p>17 commission which accepted this pipeline into operation.</p> <p>18 Q. Look, if you would, then, based on that answer, at</p> <p>19 tab 9, which is the design specifications for the KPM</p> <p>20 pipeline segment. It's Exhibit C-465.</p> <p>21 I'll ask specifically if you would look with me in</p> <p>22 the Russian version at page 73 -- the page number is in</p> <p>23 the upper right-hand corner of the Russian -- under</p> <p>24 section 4.3.5. Are you with me? It's highlighted.</p> <p>25 It's 4.3.5 at page 73 of the Russian. Each page has</p> <p style="text-align: center;">Page 88</p>

<p>15:06 1 a page number. Do you see that?</p> <p>2 A. Yes, I see it.</p> <p>3 Q. And you understand that this was one of the items of</p> <p>4 evidence that you reviewed for the KPM pipeline segment</p> <p>5 that was the subject of your report; correct?</p> <p>6 A. You mean what has been highlighted here?</p> <p>7 Q. Yes.</p> <p>8 A. I reviewed the entire working project, including this</p> <p>9 part, and it is said further on something about the</p> <p>10 pipeline, and these are its parameters; other parts of</p> <p>11 the text which you have not highlighted.</p> <p>12 Q. Look, if you would, with me at the highlighted portion</p> <p>13 in the last paragraph, which states:</p> <p>14 "The design of the Borankol -- RMB oil pipeline, is</p> <p>15 made in accordance with VSN 2.38-85 'Design of</p> <p>16 commercial steel pipes' and SN 527-80 'Instruction for</p> <p>17 design of technological steel pipes'."</p> <p>18 Do you see that?</p> <p>19 A. Can you give me the page, please? Because I opened</p> <p>20 something else.</p> <p>21 Q. The page has been in front of you, sir. Let's move</p> <p>22 along. If you would look at page 73, you see that --</p> <p>23 A. Yes, I see it now.</p> <p>24 Q. -- in this working programme document, which was the</p> <p>25 basis for the design of the pipeline at issue, you see</p> <p style="text-align: center;">Page 89</p>	<p>15:10 1 was developed in compliance with this VSN. However,</p> <p>2 have you seen the VSN data yourself?</p> <p>3 Q. Sir, I'm asking the questions here.</p> <p>4 My question to you is: do you know whether these</p> <p>5 design criteria are design criteria for an in-field</p> <p>6 pipeline? If you don't know the answer, then the answer</p> <p>7 is "no". If you do know the answer, then the answer is</p> <p>8 "yes".</p> <p>9 A. In this VSN there are mentioned criteria and arrangements in</p> <p>10 compliance with construction norms and rules. -- In this VSN there</p> <p>11 are references, in construction of a pipeline, to the</p> <p>12 SNIps that I have mentioned. All the measures in this VSN with</p> <p>13 regard to design and construction of this pipeline in question</p> <p>14 are taken from the SNIps</p> <p>15 covering main pipelines.</p> <p>16 Q. Okay. Let me ask you this, sir. Do you recall</p> <p>17 testifying in the trial of Mr Cornegruta that in fact</p> <p>18 you did not know according to what regulations and rules</p> <p>19 the work project was designed? You were asked that</p> <p>20 question at the trial, and your answer was you cannot</p> <p>21 say.</p> <p>22 If you need to refer to the trial transcript, please</p> <p>23 look at tab 11 in your binder. It is C-704. In</p> <p>24 particular, in the Russian, I would ask that you look at</p> <p>25 page 10. We have numbered the pages in the upper</p> <p>left-hand and right-hand corner. If you'll look at</p> <p>page 10 at the top of the page. Are we together?</p> <p style="text-align: center;">Page 91</p>
<p>15:07 1 two construction norms; correct? VSN 2.38-85 and</p> <p>2 SN 527-80; correct? Do you see that?</p> <p>3 A. Yes, it is written correctly. This was written by the</p> <p>4 designers.</p> <p>5 Q. Yes, and in fact --</p> <p>6 A. The design company, NIPI Neftegaz, oil and gas.</p> <p>7 However, I can say that the --</p> <p>8 Q. Thank you, you have answered my question. You can do</p> <p>9 this on counsel's time.</p> <p>10 THE CHAIRMAN: Just answer the questions, please.</p> <p>11 MR SMITH: Okay. My next question to you, sir, is: you</p> <p>12 understand that the design criteria set out behind tab</p> <p>13 number 9, these were design criteria that were used by</p> <p>14 NIPI Neftegaz to design the pipeline at issue? Do you</p> <p>15 understand that; yes or no?</p> <p>16 A. Yes, I understand what you mean to tell me: that this</p> <p>17 design was developed on the basis of VSN.</p> <p>18 Q. Yes. And you understand that the VSN citations</p> <p>19 contained in the working project are citations for the</p> <p>20 design of an in-field pipeline; correct?</p> <p>21 A. I can explain.</p> <p>22 Q. No, I have simply asked you: do you understand that</p> <p>23 these design criteria are design criteria for</p> <p>24 an in-field pipeline; yes or no?</p> <p>25 A. All right, I can explain. This VSN, the working project</p> <p style="text-align: center;">Page 90</p>	<p>15:12 1 You are being asked a question by Mr Cornegruta's</p> <p>2 defence counsel:</p> <p>3 "- Could you please tell me according to what</p> <p>4 regulations and rules was 'The oil pipeline from the</p> <p>5 deposit Borankol up to OSF at Opomaya station'</p> <p>6 designed, pursuant to such Work Project?"</p> <p>7 And what was your answer? It was you "Cannot say".</p> <p>8 Correct? Is that correct?</p> <p>9 A. I did not say I cannot reply. I say I have difficulties</p> <p>10 in answering this question. At that time I probably did</p> <p>11 not remember, but now I have looked into these matters</p> <p>12 I see and I say in compliance with what SNIps this VSN</p> <p>13 was developed.</p> <p>14 Q. Okay. Let me ask you this, sir. Is it your testimony</p> <p>15 that your memory is better today, near the end of 2012,</p> <p>16 than it was at the time you testified at Mr Cornegruta's</p> <p>17 trial that you could not tell the court according to</p> <p>18 what regulations and rules the pipeline was designed?</p> <p>19 Is that right?</p> <p>20 A. That's true. I had problems at that time to answer the</p> <p>21 question.</p> <p>22 Q. Let me ask you the next question. You were then asked:</p> <p>23 "- [At] page 74 of the Work Project."</p> <p>24 That is what we have just been looking at. The</p> <p>25 question was:</p> <p style="text-align: center;">Page 92</p>



<p>15:13 1 "It says the design of the oil pipeline 'Borankol --</p> <p>2 OSF' was carried out according to VSN 2.38-85 ... and</p> <p>3 SN 527-80 ..."</p> <p>4 Then you were asked the question:</p> <p>5 "Did you study these construction regulations?"</p> <p>6 And your answer was, "No"; correct?</p> <p>7 Sir, why are you moving the pages? We're looking at</p> <p>8 your trial transcript.</p> <p>9 You were asked the question: did you look at the</p> <p>10 specific design criteria that are set forth in the work</p> <p>11 programme that you were provided by the financial</p> <p>12 police? And your answer to that question was: no, you</p> <p>13 did not even look at the design criteria set forth in</p> <p>14 that plan; correct?</p> <p>15 A. I can reply like this. SNiPs are higher in the</p> <p>16 hierarchy than VSN, and all the parameters of this</p> <p>17 working project must comply with the construction norms</p> <p>18 and rules, which are regulatory documents in the</p> <p>19 Republic of Kazakhstan, whereas industrial or</p> <p>20 agency-specific norms are produced proceeding from the</p> <p>21 construction norms and rules as direct guidelines for</p> <p>22 design work.</p> <p>23 Q. Okay, I have your answer.</p> <p>24 Sir, let me ask you this question. Just to confirm,</p> <p>25 you made no reference whatsoever, as part of your</p> <p style="text-align: center;">Page 93</p>	<p>15:17 1 states:</p> <p>2 "In accordance with the Departmental Construction</p> <p>3 Norms 51-3-85 'Design of steel upstream pipelines',</p> <p>4 these upstream pipelines consist of the following ... "</p> <p>5 Then there are various criteria.</p> <p>6 You understand, do you not, sir, that an "upstream</p> <p>7 pipeline" is also known as a "gathering manifold" or</p> <p>8 a "field pipeline" in the business; correct?</p> <p>9 A. I'm sorry, I do not understand the question.</p> <p>10 Q. My question to you is: do you understand that what</p> <p>11 respondent's expert Latifov is referring to as</p> <p>12 an "upstream pipeline", according to these construction</p> <p>13 norms -- and you will recall, these were the</p> <p>14 construction norms by which the KPM pipeline segment at</p> <p>15 issue were designed -- an "upstream pipeline" is</p> <p>16 otherwise known as a "field pipeline" or a "gathering</p> <p>17 pipeline" or a "gathering manifold"? Do you know that</p> <p>18 or not?</p> <p>19 A. I see that the expert Latifov provides certain</p> <p>20 quotations from VSN, but he does not assert or say anything.</p> <p>21 Q. Yes, and then he differently describes -- that is the</p> <p>22 VSN for trunk pipelines. He then describes, in</p> <p>23 section 4.2, construction norms for the design of</p> <p>24 gathering lines or upstream pipelines; correct? And</p> <p>25 that is the highlighted portion. These are the criteria</p> <p style="text-align: center;">Page 95</p>
<p>15:15 1 forensic examination work that led to Mr Cornegruta's</p> <p>2 conviction, [to] the design criteria that were actually</p> <p>3 set forth in the design working document that you were</p> <p>4 provided by the financial police? You never looked at</p> <p>5 those design criteria at all; is that correct?</p> <p>6 A. I have studied design criteria and all the design</p> <p>7 criteria comply with the functions -- comply with the</p> <p>8 values in the construction norms and rules. So if there</p> <p>9 are specific construction norms and rules, there may be</p> <p>10 no other requirements. In fact, the design itself is</p> <p>11 based and must be in compliance with the construction</p> <p>12 norms and rules.</p> <p>13 Q. Let me ask you to turn -- Mr Chairman, I have very</p> <p>14 limited time, and I really need answers to my questions.</p> <p>15 THE CHAIRMAN: You will just have to answer the questions.</p> <p>16 We understand that you may want to explain further, but</p> <p>17 then counsel on the other side may ask you for that.</p> <p>18 MR SMITH: Thank you.</p> <p>19 Look, if you would, at tab 14 in your binder. This</p> <p>20 is the expert report submitted by Kazakhstan from</p> <p>21 a Mr KA Latifov. I would ask if you would look, please,</p> <p>22 at page 5 in the Russian of Mr Latifov's expert report</p> <p>23 on behalf of the respondent. In particular, it is the</p> <p>24 highlighted section appearing on page 5 at section 4.2.</p> <p>25 You will see that expert Latifov for the respondent</p> <p style="text-align: center;">Page 94</p>	<p>15:19 1 you did not examine; correct?</p> <p>2 A. I'm sorry, where does he say this? Is it page 5?</p> <p>3 Q. The same page we have been on for the last two minutes.</p> <p>4 It is on page 5, section 4.2, where respondent's expert</p> <p>5 Latifov indicates what the construction norms are for</p> <p>6 an upstream pipeline, and those are the construction</p> <p>7 norms 51-3-85, which were the construction norms that</p> <p>8 were used in the design of the KPM pipeline segment at</p> <p>9 issue. Correct?</p> <p>10 A. Yes, these excerpts quoted by Mr Latifov are contained</p> <p>11 in the working design project and they also comply with</p> <p>12 the relevant sections of the SNiP on main pipelines.</p> <p>13 Q. If you look at the criteria under section 4.2 for what</p> <p>14 Mr Latifov refers to as an upstream pipeline, if you'll</p> <p>15 look at the fourth bullet under section 4.2, it</p> <p>16 describes that an upstream pipeline "consists of the</p> <p>17 following", and the fourth bullet states:</p> <p>18 "- oil pipelines for transportation of gasified or</p> <p>19 degasified, hydrated or dehydrated oil from field</p> <p>20 storage and booster stations to central storage</p> <p>21 facilities ..."</p> <p>22 Do you see that?</p> <p>23 A. Do you mean 4.1? Could you please give me the page</p> <p>24 again?</p> <p>25 Q. It is page -- well, it is the highlighted portion that</p> <p style="text-align: center;">Page 96</p>

<p>15:21 1 is in front of you that we have been talking about, sir.</p> <p>2 It is 4.2, it is the fourth bullet point, it is</p> <p>3 highlighted for you, and it says:</p> <p>4 "- oil pipelines for transportation ..."</p> <p>5 Do you see that?</p> <p>6 A. Yes, I can see it.</p> <p>7 Q. "- oil pipelines for transportation of gasified or</p> <p>8 degasified, hydrated or dehydrated oil from field</p> <p>9 storage and booster stations to central storage</p> <p>10 facilities ..."</p> <p>11 My question to you, sir, is: that is precisely what</p> <p>12 the KPM pipeline segment at issue was; is that correct?</p> <p>13 A. I want to say that this transportation is carried out</p> <p>14 from the oil treatment centre to the commodity and raw</p> <p>15 material base, with the diameter -- with diameter ...</p> <p>16 The diameter is 159 millimetres and the thickness of the</p> <p>17 wall 6 millimetres. For this --</p> <p>18 THE CHAIRMAN: I'm sorry, I think you forgot the question</p> <p>19 that was asked. We were not asking about the diameters</p> <p>20 and so on. So perhaps I will pass it back to you.</p> <p>21 A. These criteria -- this criterion also complies with the</p> <p>22 provisions of the SNiP on main pipelines.</p> <p>23 MR SMITH: Let's follow up on that.</p> <p>24 Look, if you would, at tab 13, please, sir. Behind</p> <p>25 tab 13 is an excerpt from the expert opinion again of</p> <p style="text-align: center;">Page 97</p>	<p>15:25 1 you didn't have an opportunity to review this in your</p> <p>2 work. But you will see under section 1.3 it is</p> <p>3 highlighted:</p> <p>4 "The makeup of oilfield pipelines shall include ..."</p> <p>5 Look at section (h). It says:</p> <p>6 "h) the oil pipelines ..."</p> <p>7 And this is Latifov Exhibit 2, for the record. It</p> <p>8 says:</p> <p>9 "h) the oil pipelines for transporting commercial</p> <p>10 oil from central gathering plants to trunk</p> <p>11 transportation facilities ..."</p> <p>12 So your prior answer is not correct, is it, sir? In</p> <p>13 fact an oilfield pipeline can include a pipeline,</p> <p>14 according to the design criteria that were used for this</p> <p>15 pipeline, for transporting commercial oil from central</p> <p>16 gathering plants to trunk transportation facilities.</p> <p>17 My question to you, sir, is: isn't that precisely</p> <p>18 the KPM pipeline segment at issue? It was transporting</p> <p>19 commercial oil, in your view, from a central gathering</p> <p>20 plant, the oil treatment facility, to trunk</p> <p>21 transportation facilities.</p> <p>22 A. According to the working project and also to rules and SNiPs,</p> <p>23 from the oil treatment center to the commodity and raw material</p> <p>24 base KPM transported commercial oil -- end production..</p> <p>25 It was stored at the commodity and raw base centre</p> <p>for subsequent transportation through the export</p> <p style="text-align: center;">Page 99</p>
<p>15:23 1 an expert retained by Kazakhstan in this matter,</p> <p>2 Professor Didenko, and we have only excerpted a portion</p> <p>3 of that. I will ask if you will look at the Russian and</p> <p>4 I just want to see if you agree with Professor Didenko,</p> <p>5 where he states in the highlighted portion (page 20):</p> <p>6 "Thus, from a technical point of view, it's</p> <p>7 difficult to define a clear distinction between the</p> <p>8 concepts of trunk pipeline and non-trunk pipeline, so</p> <p>9 for the legal assessment of use of pipeline as the trunk</p> <p>10 one, the following should be considered ..."</p> <p>11 And he sets forth what in his view are four</p> <p>12 criteria.</p> <p>13 Do you agree with Kazakhstan's expert in this matter</p> <p>14 that, from a technical viewpoint, it's difficult to</p> <p>15 define a clear distinction between the concept of</p> <p>16 a trunk and a non-trunk pipeline?</p> <p>17 A. Technically speaking, yes, they may coincide. However,</p> <p>18 the fact that commercial oil is being pumped, and this</p> <p>19 pipeline -- and there is a distinction with respect to</p> <p>20 SNiP and the VSN that you mentioned earlier: according to VSN</p> <p>21 transportation of commercial oil is not carried out.</p> <p>22 Q. Let's look then at tab 16, which is VSN 51-3-85. This</p> <p>23 again is the industry specific construction standard for</p> <p>24 in-field pipelines. If you will look at -- it is the</p> <p>25 last tab in the document. I believe we have established</p> <p style="text-align: center;">Page 98</p>	<p>15:27 1 pipeline, which is also mentioned in the design. So it</p> <p>2 was the ready commercial oil that was being pumped.</p> <p>3 Q. And that ready commercial oil fits neatly within the</p> <p>4 definition contained in VSN 51-3-85 for the services</p> <p>5 provided by an in-field pipeline; correct? That we have</p> <p>6 just looked at.</p> <p>7 A. It doesn't say that commercial oil is transported in</p> <p>8 your VSN.</p> <p>9 Q. We'll move on. Just a couple more questions.</p> <p>10 DR NACIMIENTO: I believe the time is up.</p> <p>11 THE CHAIRMAN: I won't argue about a few minutes, after five</p> <p>12 or six days.</p> <p>13 DR NACIMIENTO: How many minutes? We already had one</p> <p>14 additional hour for respondent.</p> <p>15 THE CHAIRMAN: I hear he has a couple more questions;</p> <p>16 I think that is quite in order. Let's not count</p> <p>17 minutes, after six days.</p> <p>18 MR SMITH: Sir, literally just a few more questions.</p> <p>19 My first one is: you agree that as a forensic</p> <p>20 examiner with the Ministry of Justice, you had</p> <p>21 an obligation to conduct a comprehensive, full and</p> <p>22 objective investigation; correct?</p> <p>23 A. In compliance with my duties, I must provide an expert</p> <p>24 opinion in reply to questions put to me by law</p> <p>25 enforcement bodies, courts, investigation bodies and prosecuting</p> <p style="text-align: center;">Page 100</p>

<p>15:29 1 bodies.</p> <p>2 Q. That must be a comprehensive, full and objective</p> <p>3 investigation; correct?</p> <p>4 A. Yes, naturally.</p> <p>5 Q. You also are entitled, as part of that investigation, to</p> <p>6 request any additional materials if required for you to</p> <p>7 enter an opinion; correct?</p> <p>8 A. I can request it. I can apply for -- in case the</p> <p>9 materials submitted to me are not sufficient to provide</p> <p>10 an opinion, I can apply to receive additional materials.</p> <p>11 In this expert examination there was no such need; the</p> <p>12 materials were sufficient to conduct expert examination</p> <p>13 and to produce a report.</p> <p>14 Q. Thank you.</p> <p>15 Then you also, would agree -- I think you say this</p> <p>16 in your witness statement at paragraph 3.1 -- that you</p> <p>17 were instructed by Chief Investigator Rakhimov to</p> <p>18 complete your examination, in your words, "in the</p> <p>19 shortest time possible"; correct?</p> <p>20 A. Mr Rakhimov did not instruct me in any way. There was</p> <p>21 a legitimately made decision to carry out forensic</p> <p>22 examination, which was obligatory for me, and the words</p> <p>23 that you refer to are taken from a cover letter from the</p> <p>24 head of department of financial police. This is common</p> <p>25 practice.</p> <p style="text-align: center;">Page 101</p>	<p>15:32 1 the financial police in advance of your report, which is</p> <p>2 C-110 in the record, that was provided in response to</p> <p>3 Mr Rakhimov's request; correct?</p> <p>4 A. What tab, please?</p> <p>5 Q. Tab 8.</p> <p>6 A. And the question is, sir?</p> <p>7 Q. My question to you is: you were not provided by the</p> <p>8 financial police, prior to rendering the report that is</p> <p>9 at [C-110], which you are looking at, you were not</p> <p>10 provided by the financial police with contrary opinions</p> <p>11 that had been reached by experts at the national oil</p> <p>12 company, KazMunaiGas, at NIPI Neftegaz and at the</p> <p>13 Ministry of Emergency Situations, all of which concluded</p> <p>14 that the KPM pipeline at issue was not in fact a main</p> <p>15 pipeline but was in fact a gathering line?</p> <p>16 A. At the moment when I produced my report, except for the</p> <p>17 documents described here, I had not received by this</p> <p>18 time any other documents.</p> <p>19 MR SMITH: No further questions.</p> <p>20 THE CHAIRMAN: Do you have any further questions from your</p> <p>21 side?</p> <p>22 DR NACIMIENTO: No questions, thank you.</p> <p>23 THE CHAIRMAN: Last opportunity for my colleagues to ask</p> <p>24 questions. But I don't encourage you!</p> <p>25 MR HAIGH: No, thank you.</p> <p style="text-align: center;">Page 103</p>
<p>15:31 1 Q. In fact you completed your examination -- I believe you</p> <p>2 have in your witness statement that it took you a grand</p> <p>3 total of three days, but in fact you told the trial</p> <p>4 court, in connection with Mr Cornegruta's trial, that it</p> <p>5 took you two days.</p> <p>6 Do you recall it took you only two days to complete</p> <p>7 your examination?</p> <p>8 A. Yes, two or three days.</p> <p>9 Q. It was two days. That's what you testified to under</p> <p>10 oath in the criminal proceeding; correct?</p> <p>11 A. Yes, I said two days: the 11th and the 12th.</p> <p>12 Q. One last question, and I believe you confirmed this in</p> <p>13 your report at paragraph 9.4, but I want to make sure</p> <p>14 the record is clear: that other than the materials set</p> <p>15 out in your expert examination report that were provided</p> <p>16 to you by the financial police, you were not provided</p> <p>17 with access to -- nor were you aware of -- contrary</p> <p>18 opinions regarding whether KPM operated a main pipeline</p> <p>19 that had been provided by the national oil company, KMG,</p> <p>20 NIPI Neftegaz, the Ministry of Emergency Situations?</p> <p>21 You were not aware of that each of those three bodies</p> <p>22 had reached expert conclusions that were contrary to the</p> <p>23 conclusion that you reached; correct?</p> <p>24 A. When didn't I know?</p> <p>25 Q. You cannot know that those opinions had been provided to</p> <p style="text-align: center;">Page 102</p>	<p>15:35 1 THE CHAIRMAN: Any questions from you? No, I don't</p> <p>2 encourage myself either.</p> <p>3 All right. Thank you very much for your testimony,</p> <p>4 you were very patient, and that concludes your</p> <p>5 testimony, thank you. You can now leave.</p> <p>6 Can we go on right away to the procedural</p> <p>7 discussion?</p> <p>8 (3.35 pm)</p> <p>9 Discussion re procedural matters</p> <p>10 THE CHAIRMAN: What we have before us now is the usual final</p> <p>11 task of a hearing of that kind: to see how we go on in</p> <p>12 the further procedure. In this case, this is not the</p> <p>13 final step, as we all know; we have another hearing on</p> <p>14 quantum in January, the dates are set, and it will be</p> <p>15 here, as you all know. So all we have to do is discuss</p> <p>16 what at this moment right now we can do.</p> <p>17 We promised you, as you I am sure will recall, in</p> <p>18 the preparation up to this hearing that you would have</p> <p>19 two rounds of post-hearing briefs, including the</p> <p>20 possibility to submit further comments by your experts</p> <p>21 in reply to expert comments that had been received in</p> <p>22 between, and of course that still stands. The only</p> <p>23 question that we would raise now with you -- and one of</p> <p>24 the parties, I don't remember which one, raised that</p> <p>25 question as well in the correspondence before this</p> <p style="text-align: center;">Page 104</p>



<p>15:37 1 hearing -- is: at which time should we have those</p> <p>2 post-hearing briefs?</p> <p>3 We discussed it in the Tribunal and I can tell you,</p> <p>4 subject to what we hear from you, that we find it might</p> <p>5 be more helpful to have post-hearing briefs covering</p> <p>6 everything after the January hearing, rather than have</p> <p>7 now a first stage of post-hearing briefs on what we have</p> <p>8 done here, and then another one after the January</p> <p>9 hearing. That obviously would have the advantage for</p> <p>10 the parties that they can now concentrate on the quantum</p> <p>11 phase for that hearing, and it would have the advantage</p> <p>12 for us that we get a final document which covers it all,</p> <p>13 as far as the post-hearing briefs are concerned.</p> <p>14 So let me first ask whether that would be fine with</p> <p>15 you?</p> <p>16 MR SMITH: Yes, that would be fine with the claimants.</p> <p>17 DR NACIMIENTO: Also from respondent's side.</p> <p>18 THE CHAIRMAN: Very good. So we proceed that way: no</p> <p>19 post-hearing briefs right now. Of course, you can</p> <p>20 already start preparing that, and that may not be a bad</p> <p>21 idea, because now you still have a good memory of what</p> <p>22 happened here; but then you can keep it on and you can</p> <p>23 update it then after the January hearing.</p> <p>24 So we will have two post-hearing briefs. The common</p> <p>25 understanding from our side -- I suppose also from your</p> <p style="text-align: center;">Page 105</p>	<p>15:40 1 simply not sufficient.</p> <p>2 THE CHAIRMAN: I am sorry?</p> <p>3 DR NACIMIENTO: 30 days are not sufficient: that is my</p> <p>4 initial reaction to that. I would have requested at</p> <p>5 least five weeks.</p> <p>6 THE CHAIRMAN: Well, what we could do is have a slightly</p> <p>7 longer period for the first round and then a slightly</p> <p>8 shorter period for the second, because that would only</p> <p>9 be in rebuttal, and that would then meet your concern.</p> <p>10 We could call it basically five weeks for the first</p> <p>11 round -- we will look at dates in a minute -- and then</p> <p>12 have something like three weeks for the second round,</p> <p>13 because that will be much more limited. The second</p> <p>14 round will obviously be limited to rebuttal of what was</p> <p>15 submitted in the first round, so it will be a much more</p> <p>16 limited scope.</p> <p>17 Would that be then agreeable to the claimants as</p> <p>18 well?</p> <p>19 MR SMITH: Yes.</p> <p>20 THE CHAIRMAN: Then let's try to make dates of that. You</p> <p>21 will, of course, get a short procedural order confirming</p> <p>22 that, but obviously it is good for all of us to know</p> <p>23 that right away.</p> <p>24 The hearing stops on 31st January, if I see it</p> <p>25 correctly. If we take five weeks from that, so</p> <p style="text-align: center;">Page 107</p>
<p>15:38 1 side -- was that they would be simultaneous, two rounds</p> <p>2 simultaneously, and the question is: how much time do</p> <p>3 the parties need?</p> <p>4 MR SMITH: From the claimants' perspective, we would be</p> <p>5 ready 30 days after the conclusion of the damages</p> <p>6 hearing.</p> <p>7 THE CHAIRMAN: I am glad to hear that, because we were</p> <p>8 looking at our own planning for deliberations: we have</p> <p>9 until July, from the Stockholm Chamber, for our award,</p> <p>10 and we would like to stick to that if possible and get</p> <p>11 the award out by that time, next summer. But in order</p> <p>12 to do that, we have to start deliberating, of course, at</p> <p>13 some stage, in such a complex case, and I can tell you</p> <p>14 frankly we picked a date very early in May, and of</p> <p>15 course we would need about a month to digest whatever</p> <p>16 you sent to us.</p> <p>17 So our suggestion was going to be -- I will ask you</p> <p>18 in a minute whether that is okay with you as well --</p> <p>19 that the hearing in January is the end of January, so if</p> <p>20 by the end of February we could get the first round, and</p> <p>21 then by the end of March the second round of</p> <p>22 post-hearing briefs, that would give us the one month we</p> <p>23 need to digest things.</p> <p>24 How would the respondent feel about that?</p> <p>25 DR NACIMIENTO: My initial reaction would be that 30 days is</p> <p style="text-align: center;">Page 106</p>	<p>15:42 1 8th March would be the date for the first round; that is</p> <p>2 the five weeks. That is a Friday. And then we would</p> <p>3 count three: now, that is Easter.</p> <p>4 Do you want to have your date before Easter or after</p> <p>5 Easter? Maybe if we tell you before Easter, that saves</p> <p>6 your Easter time. Shall we call it 29th March?</p> <p>7 DR NACIMIENTO: That is after or before Easter?</p> <p>8 THE CHAIRMAN: 29th March is the Friday before Easter. That</p> <p>9 still saves your Easter Sunday.</p> <p>10 MR SMITH: I think it is entirely appropriate that we submit</p> <p>11 on Good Friday.</p> <p>12 THE CHAIRMAN: Shall we call it that? So it is 29th March</p> <p>13 for the second round.</p> <p>14 Obviously after that we will still need cost claims</p> <p>15 at some stage, but that is something we can discuss at</p> <p>16 the January hearing. We don't need those necessarily</p> <p>17 for our first deliberations. So we can give you some</p> <p>18 time for that, and you will probably need some time,</p> <p>19 because you want to calculate all the work you have done</p> <p>20 up to the second round of post-hearing briefs. So</p> <p>21 normally I would think you need another three weeks or</p> <p>22 something to do the cost claims.</p> <p>23 What I normally do is also give the parties a chance</p> <p>24 for a short comment on the cost claims of the other</p> <p>25 side. If you don't do that, they want to do it anyway.</p> <p style="text-align: center;">Page 108</p>

<p>15:43 1 So we will have a very short second round on cost</p> <p>2 claims. But that does not really affect our</p> <p>3 deliberations so much because that is later.</p> <p>4 Alright. Well, wonderful. That's all we have to do</p> <p>5 right now, I think. Any further questions before I come</p> <p>6 to my normal last words?</p> <p>7 MR SMITH: Nothing from claimants.</p> <p>8 DR NACIMIENTO: Not from our side.</p> <p>9 THE CHAIRMAN: The usual question, of course, is again: have</p> <p>10 the parties any objections to the procedure as we have</p> <p>11 done it up to now, as we have conducted it up to now?</p> <p>12 Because it would be good for us to know. Claimants?</p> <p>13 MR SMITH: None from the claimants.</p> <p>14 DR NACIMIENTO: No objections.</p> <p>15 THE CHAIRMAN: Thank you very much.</p> <p>16 Then I come to the pleasant duty of thanking</p> <p>17 everybody: first, the parties. I know it is</p> <p>18 a complicated and tough fight that we have here before</p> <p>19 us, and the case is very complex. Taking that into</p> <p>20 account, I think we can be very grateful that counsel</p> <p>21 were conducting themselves in such a civilised way.</p> <p>22 Obviously there were disputes and different opinions;</p> <p>23 that is normal. I would be astonished if that would not</p> <p>24 occur. But it is helpful -- I don't have to tell you,</p> <p>25 but I will tell you -- for a tribunal, it is very</p> <p style="text-align: center;">Page 109</p>	<p>15:46 1 important to us as well.</p> <p>2 So that is all. Thank you very much for all this,</p> <p>3 and I wish you a good journey home</p> <p>4 (3.46 pm)</p> <p>5 (The hearing concluded)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 111</p>
<p>15:45 1 helpful if you have on both sides experienced counsel.</p> <p>2 Once in a while I don't have that, and then things</p> <p>3 become much more complicated. So I am grateful for that</p> <p>4 as well, for the help that we get from you.</p> <p>5 I expressly again, as I mostly do -- if I don't</p> <p>6 forget -- extend my thanks to the support staff, the</p> <p>7 paralegals and to all the others. I know that full</p> <p>8 teams are behind all that, otherwise that couldn't</p> <p>9 function. And I am not saying they are more important</p> <p>10 than the lawyers, but they are very important, so</p> <p>11 I expressly extend my thanks to them.</p> <p>12 Let me thank the interpreters: they have had a very</p> <p>13 difficult job to do, I am quite aware, in various</p> <p>14 languages. Some are not here anymore, but they will</p> <p>15 hear about it, I take it. We thank you very much for</p> <p>16 also reacting when we started waving our hands and all</p> <p>17 this. So we had an interesting way to communicate, but</p> <p>18 it did work out somehow.</p> <p>19 The court reporter: the first court reporter isn't</p> <p>20 here, but his colleague is here, and they have done</p> <p>21 a very good job -- as usual, because I know the firm --</p> <p>22 so let me thank them as well.</p> <p>23 Of course, we also, from the Tribunal, thank the</p> <p>24 Secretary of the Tribunal behind us. I am not going to</p> <p>25 say she is more important than we are, but she is very</p> <p style="text-align: center;">Page 110</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 DR SEONG HOON KIM (called) ..... 1</p> <p>4 Direct examination by DR NACIMIENTO 3</p> <p>5 Cross-examination by MR MOHR ..... 9</p> <p>6 Re-direct examination by DR NACIMIENTO 21</p> <p>7 Further cross-examination by MR MOHR .... 23</p> <p>8 MR SERIK DOSYMOVICH RAKHIMOV ..... 26</p> <p>9 (called)</p> <p>Direct examination by DR NACIMIENTO 27</p> <p>10</p> <p>Cross-examination by MS ROEBUCK FREY 30</p> <p>11 ..... 34</p> <p>MR RUSTAM NURLANOVICH</p> <p>AKHMETOV</p> <p>12 (called)</p> <p>13 Direct examination by DR NACIMIENTO 35</p> <p>14 Cross-examination by MR SMITH ..... 40</p> <p>15 MR MIRBULAT ZARIFOVICH ONGARBAEV ..... 45</p> <p>(called)</p> <p>16 Direct examination by DR NACIMIENTO 46</p> <p>17 Cross-examination by MR FLEURIET ..... 50</p> <p>18 Re-direct examination by DR NACIMIENTO 74</p> <p>19</p> <p>MR SALAMAT SARTEVICH BAYMAGANBETOV ..... 78</p> <p>20 (called) 79</p> <p>21 Direct examination by DR NACIMIENTO</p> <p>22 Cross-examination by MR SMITH ..... 86</p> <p>23 Discussion re procedural matters ..... 104</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 112</p>

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