IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Case No 2006 Folio 1218

Before the Honourable Mr Justice Andrew Smith

BETWEEN:

MICHAEL CHERNEY

Claimant

- and -

OLEG VLADIMIROVICH DERIPASKA

Defendant

CLAIMANT'S WRITTEN OPENING
SUBMISISONS FOR TRIAL

References to documents in the trial bundles are in the form {Bundle/Tab (if relevant)/Page}.

Various agreed documents will also be lodged with or shortly after these submissions. A preliminary reading list will be lodged at the same time as these submissions. A dramatis personae, a procedural chronology and a substantive chronology are still in the process of being agreed between the parties, and so shall be lodged separately shortly.

OUTLINE CONTENTS

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A. INTRODUCTION

1. This case arises out of a meeting between Mr Michael Cherney and Mr Oleg Deripaska at the Lanesborough Hotel on 10 March 2001. It is common ground that they met. It is common ground that they reached an agreement of some sort. Little else is. In essence, the position is as follows.

2. Mr Cherney says:

    1) Mr Deripaska and he were partners.

    2) By 2001, their relative status and positions had changed, and at the Lanesborough Hotel Mr Deripaska agreed to buy him out of their joint aluminium business. The terms of their agreement were, for the most part, recorded in two documents drafted by Mr Deripaska and signed by both of them, prosaically entitled "Agreement No 1" and "Supplement No 1".[1]

    3) Under the former, Mr Deripaska agreed to make a preliminary payment of US$250 million to Mr Cherney for his interest in Sibal. Under the latter, Mr Deripaska undertook to pay Mr Cherney the value of 20% of the shares in OJSC Russky Alyuminiy (the vehicle that was intended to hold the entirety of the merged Sibal/Sibneft business), minus the US$250 million, within a specified number of years.

    4) Agreement No 1 has been performed; Supplement No 1 has not; on the contrary it has been repudiated by Mr Deripaska.

3. Mr Deripaska says:

    1) He agrees that he drafted Agreement No 1, which appears on its face to provide for the sale by Mr Cherney to Mr Deripaska of an interest in a company known as Sibal and the making of a preliminary payment by Mr Deripaska in return.

    2) He agrees that he and Mr Cherney signed that document on 10 March 2001.

    3) He accepts that he did in fact pay Mr Cherney $250 million.

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[1] Both parties have put forward proposed translations of both agreements. In addition, the translation experts have also agreed a translation for the purposes of, and on the basis explained in, their Joint Memorandum. The translations of Ms Edwards (Claimant's expert) can be found in Appendix D to her report at {15/2/47} - {15/2/52} (there are two versions: "clean" versions and versions showing the differences between her translation and that originally prepared for the Claimant and relied on at the jurisdiction stage and in advance of the expert translation evidence). The translations of Professor Konurbaev can be found in paragraph 6.2 of his report at {15/3/76} - {15/3/78} . The agreed translation can be found attached to the Joint Memorandum, and needs to be read in conjunction with the Joint Memorandum (which explains the basis on which it was agreed): {10/1/1} - {10/1/12} .

4) He accepts also that he drafted Supplement No 1, which appears on its face to be the supplement to Agreement No 1, and to provide for Mr Deripaska to pay the market value of 20% of the shares in Rusal, less the $250 million already paid as a preliminary payment pursuant to Agreement No 1.

5) He accepts that much and no more. Thereafter, Mr Deripaska's case departs radically from Mr Cherney's. He asserts that all was not as it seemed.

6) He says that Agreement No 1 was not, despite its appearance, an agreement pursuant to which Mr Deripaska purchased Mr Cherney's interest. Indeed, he says, Mr Cherney had no interest to sell. Mr Cherney was not his partner; rather, Mr Cherney was a representative of Russian organised crime groups ("OCGs"), who had imposed a "*krysha*" arrangement[2] or extortion racket upon him since 1995, in conjunction with Mr Anton Malevsky and Mr Sergei Popov. In truth, Mr Deripaska says, Agreement No 1 was a sham agreement prepared by him to disguise a payment of $250 million to Mr Cherney in order to terminate the *krysha*. What was agreed on 10 March 2001, he says, was the termination of the *krysha*.

7) As for Supplement No 1, this was not an agreement reached with Mr Cherney, nor was it, despite its name and appearance, a supplement to Agreement No 1. The document was not prepared for Mr Cherney. Whilst, as Mr Deripaska admits, he had it with it with him, it was not discussed with or even shown to Mr Cherney on 10 March 2001, let alone given to him. The document was, he says, prepared for giving to Mr Malevsky, and in fact given to him, at a later meeting in Moscow.

8) Supplement No 1 in truth, it is said, had nothing to do with accounting to Mr Cherney (or Mr Malevsky for that matter) for the value of 20% of the shares in Rusal; rather it too was a sham – a meaningless document designed only to provide cover for payments to Mr Malevsky to terminate the *krysha*.

9) Mr Deripaska says he does not know how or when Mr Cherney came to be in possession of Supplement No 1, or how or when it came apparently to be signed by him – in fact he goes so far as to allege that Mr Cherney's signature on Supplement No 1 is a forgery.

4. It will immediately be apparent that there is an acute conflict of evidence between these two accounts. They are not reconcilable; there is no room for misunderstanding. As Christopher Clarke J put it in his jurisdiction judgment, one of Mr Cherney and Mr Deripaska "*is plainly telling lies on a*

[2] This Russian terminology is referred to extensively in the parties' pleadings and evidence. It should be noted that "*krysha*" (literally "roof" in Russian) refers to protection provided by extortionists whereas "*dolya*" (literally "share" in Russian) refers to payments made to extortionists for the purpose of obtaining protection.

grand scale".[3]

5. It is Mr Cherney's position that Mr Deripaska is telling lies on a grand scale. He is doing so in the hope of avoiding his obligations to Mr Cherney, the obligations he agreed to on 10 March 2001 in the Lanesborough Hotel. In order to avoid those obligations, Mr Deripaska has constructed – indeed, is continuing to construct – a bogus defence. That house of cards will, it is submitted, collapse at trial. Once his defence is shown to be false in one respect, it will be revealed as false in all respects. Take for example, the true nature of the relationship between Mr Cherney and Mr Deripaska, or the true nature of the alleged *dolya* payments, or the question of whether Supplement No 1 was in truth given by Mr Deripaska to Mr Cherney on 10 March 2001. Once the Court concludes on any one of those that the case advanced by Mr Deripaska is false (since the relationship was not one of *krysha* or the payments were not *dolya* or Supplement No 1 was given to Mr Cherney), the Court can then only conclude that Mr Deripaska is advancing a defence on that point he knows to be false; there is no room for honest misunderstanding here. For that reason (i.e. the conclusion that Mr Deripaska is advancing a defence that he knows to be false – and it is submitted that there is only one sensible answer to the rhetorical question "why is Mr Deripaska advancing a defence that he knows to be false") and because all the elements of Mr Deripaska's defence are interconnected, such a conclusion will lead inexorably to the result that the whole construct, the whole house of cards, collapses.

6. A review of the evidence in this case will, Mr Cherney suggests, leave the Court with no doubt as to the true position. Mr Deripaska has sought to re-write history. Mr Deripaska is one of the richest and most influential men in modern Russia; his power cannot be overstated. No doubt for that reason he feels that even history must bow to his whim.[4] But his power and influence do not extend to the contemporaneous documents. Those cannot be rewritten, however revisionist the historian. The Court will be presented at trial with the large body of contemporaneous documents of all sorts, many generated and maintained by independent, professional third parties, many produced by Mr Deripaska's own staff, which are utterly inconsistent with Mr Deripaska's case. In the face of such contemporaneous documents, the construct will unravel. By way of example only:

    1) Mr Deripaska has disclosed a series of balance sheets and associated spreadsheets prepared by his own staff, which he and his witnesses have referred to in evidence as "private cash registers". These documents are completely at odds with Mr Deripaska's case. The explanation tendered for the documents is that they were used to record, amongst other things, the "*dolya*" payments which he made to Mr Cherney, Mr Malevsky, and Mr Popov.

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3 [2008] EWHC 1530 (Comm) at [119]: {4/1/27} .

4 It should not be forgotten that these proceedings are taking place in this jurisdiction because Christopher Clarke J and the Court of Appeal recognised the difficulties for Mr Cherney in obtaining a fair trial in Russia in view of Mr Deripaska's power and influence. The reality of Mr Deripaska's power and influence will also need to be borne in mind when assessing the evidence tendered by Mr Deripaska and the difficulties experienced by Mr Cherney in obtaining evidence or assistance from witnesses in Russia.

On closer analysis, however, these are plainly not documents which record *dolya* payments; rather they are balance sheets of the aluminium business. They provide a comprehensive summary of assets and liabilities and they record entitlement to distributions of profits to the partners as well as financial contributions made by them. The manner in which Mr Deripaska and his employees have dealt with the documents is considered further below, and will have to be addressed in evidence. To put the matter at its lowest, there has been a significant failure to engage with the substance or detail of these documents, with further purported (and incomplete) explanations for them emerging only recently. If there was no partnership between him and Mr Cherney, how and why did it come to pass that Mr Deripaska's internal records, very carefully maintained for him by his closest employees in his private office, came to record and present matters in the way they did?

2) There is before the Court a great volume of contemporaneous records and documents deriving from the files of a Liechtenstein professional fiduciary firm called Praesidial Anstalt and its subsidiary Syndikus Treuhandanstalt (jointly referred to herein as "Syndikus") that managed the affairs of Mr Cherney and Mr Deripaska for a number of years. Taken together, these documents constitute an overwhelming body of evidence in support of Mr Cherney's case. Recognising the difficulties which the Syndikus documents create for his *krysha* allegations, Mr Deripaska has resorted to challenging their authenticity and to making very serious allegations of impropriety against the Syndikus personnel. But this would be a most unlikely deception for Syndikus to have perpetrated. Mr Deripaska can offer no answer to the question: why would Syndikus have had any motive to fabricate documents which show that he and Mr Cherney were partners?

3) Mr Deripaska denies that Mr Cherney had any involvement in the extremely profitable joint venture which was established in 1995 with Trans World Group ("TWG"). In fact, however, 50% of the Irish company that was used for the joint venture – Tradalco Limited ("Tradalco") – was owned by Bluzwed Metals Limited ("Bluzwed Metals"), a company which is shown by the documents to have been incorporated originally for the sole benefit of Mr Cherney. In order to sustain his *krysha* allegations, Mr Deripaska is forced to put forward the explanation that he believed that he had acquired Bluzwed Metals off-the-shelf and that he did not discover that it was Mr Cherney's company until many years later. But is it credible that Mr Deripaska employed, for the purposes of a (very substantial and profitable) joint venture with TWG, a company incorporated by Mr Cherney and of which Mr Cherney was the beneficial owner, if he and Mr Cherney were not in partnership, jointly engaged in the aluminium business?

7. In response to the problems for his case presented by the contemporanrous documents, Mr Deripaska has essentially four responses: (i) advancing a (false) *ex post facto* explanation for them which he thinks might be consistent with the existence of a *krysha* arrangement; (ii) alleging that

the documents are unreliable, misleading, and (in some cases) fabricated, whilst making accusations against those who produced them; (iii) suggesting that the *krysha* imposed on him was "sophisticated" and involved extensive "*krysha* ritual", which involved the target of the extortion racket acting in a manner consistent with being a business partner and friend of the extortioner, rather than his victim and keeping the protection which was being paid for secret from everyone, including his very closest colleagues, in the hope that this might explain the inexplicable; and (iv) employing diversionary tactics.

8. So far as the first three are concerned – the after-the-event rationalisation, the allegations of impropriety and what might be termed "the Lewis Carroll defence", since it is based on the premise that nothing is what it seems to be and is indeed the very opposite of what it appears[5] – they will have to be tested at trial against the evidence and the inherent probabilities. A number of initial observations can be made at this stage, however:

    1) First, although Mr Deripaska has maintained throughout these proceedings that Mr Cherney never made <u>any</u> investments whatsoever into the partnership, the reality is very different. Indeed, Mr Deripaska's own forensic accountancy expert has identified a substantial number of payments of significant value which were made by companies controlled by Mr Cherney to companies controlled by Mr Deripaska and which either were, or may have been, used for the purposes of the aluminium business and their partnership. Most notably, the evidence shows that Mr Cherney made significant financial contributions to the partnership between February and September 2000, at a time when, the shareholders of Sibal had an urgent requirement for cash, as they were required to make a balancing payment of US$575 million to the shareholders of Sibneft as part of the merger of those businesses that led to the creation of Rusal. Other than in the world of "Through the Looking Glass", what sort of extortion racket is it that involves the extortioner paying money to the victim? Indeed, "*curiouser and curiouser*", in early 2002, shortly after receipt of it (as part of the preliminary payment of $250 million), Mr Cherney, at Mr Deripaska's request, promptly loaned $129 million back to Mr Deripaska.

    2) Secondly, it is submitted that it will become clear from an analysis of Mr Deripaska's pleaded *dolya* payments that the entire *krysha* case has been made up after the event. The documents show that many of the alleged *dolya* payments were in fact contributions by Mr Deripaska to the Yudashkin and Soyuzcontract businesses in which he and Mr Cherney (amongst others) were partners. Why was Mr Deripaska investing in these businesses with Mr Cherney (and Mr Popov, Mr Malevsky and Mr Iskander Makhmudov) if he was not involved in a business relationship with him?

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5 "*If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't. And contrary wise, what is, it wouldn't be. And what it wouldn't be, it would. You see*?" per the Mad Hatter.

3) Thirdly, the role of Mr Makhmudov does not make sense on Mr Deripaska's case. Up until recently Mr Deripaska did not dispute the existence of a substantial business relationship between Mr Makhmudov and Mr Cherney: indeed, he could not sensibly do so since the accountancy evidence shows that Mr Cherney, in particular via his entity Blonde Investment Corporation ("Blonde"), contributed multi-million dollar sums over a number of years to his joint copper business with Mr Makhmudov. However, the difficulty for this in relation to Mr Deripaska's case is obvious. If Mr Cherney formed an entirely legitimate business partnership with Mr Makhmudov, is it credible for Mr Deripaska to maintain that he (Mr Deripaska) was simultaneously the victim of a *krysha* arrangement imposed upon him by Mr Cherney? This is especially so given that Mr Deripaska says that he entered into his own business relationship with Mr Makhmudov and that they became good friends. Notwithstanding that Mr Makhmudov's relationship with Mr Cherney has been part of the factual matrix from the outset, Mr Deripaska had never previously suggested anything illegitimate about it. However, recognising the difficulty for his case caused by his acceptance of the legitimacy of the relationship between Mr Cherney and Mr Makhmudov, Mr Deripaska's position has recently begun to shift.[6] He has form in this regard: he has already performed an equivalent *volte face* on Mr Cherney's relationship with TWG (as to which see below). But if there truly was something illegitimate about Mr Cherney's relationship with Mr Makhmudov, why has Mr Deripaska's evidence been so inconsistent and why have the allegations emerged so late and in such a piecemeal fashion?

9. As for the fourth of these – the diversionary tactics – Mr Deripaska has made far-reaching and scandalous allegations of criminality against Mr Cherney and a host of other people, in an attempt to conceal the lack of evidential basis to support his allegations of *krysha*. This tactic has been employed to such an extent that even in the interlocutory stages it has led to the impression that the two parties are involved in completely separate cases: one a dispute about the nature of the relationship between Mr Cherney and Mr Deripaska and the terms of the agreement they reached in March 2001, and the other about whether or not Mr Cherney and a host of third parties are or were or have ever been involved in any criminal activity. It is confidently anticipated that this – the impression that there are two unrelated cases being argued before the Court – will only get stronger at trial; indeed, experience alreasy shows this to be the case.[7] Some key points should be made

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6 See the evidence of Witness M and Witness N, whose witness statements were served by Mr Deripaska on 6 June 2012: {8H /69/2125} - {8H/69/2137} and {8H /70/ 2138} - {8H/70/2159}

7 The experience, for example, of seeking to agree a reading list, dramatis personae and chronology with the Defendant has amply illustrated the point. Take the dramatis personae, for example: what started as (what the Claimant believed to be) a very comprehensive 19-page dramatis, was transformed by the addition of 28 further pages of material by the Defendant, almost exclusively relating to the allegations of criminality. To take another example, the Defendant's recent disclosure and hearsay notices (and indeed, proposed additions to dpcuments which were intended to be agreed) make it plain that the much ventilated "false aviso" allegations will be featuring centrally in the case advanced by the Defendant. It seems that, undeterred by the refusal of permission to amend, the Defendant intends to continue to seek to prove at trial that Mr Cherney was in fact involved in "false aviso" schemes. The Claimant has set out his position on this point before, and will address it further orally as necessary.

about this aspect of the case at this stage:

1) As a matter of fact, Mr Cherney has never been convicted of a criminal offence anywhere in the world. It is, however, a peculiar feature of the extraordinary social, political and business landscape of Russia and the former Soviet Union in the 1990s, that a very large number of businessmen (and indeed politicians) have come to be accused either of having carried out criminal activities themselves or of having been associated with criminals. Although allegations of criminal conduct have been made against Mr Cherney, the same is true of both Mr Deripaska and Mr Makhmudov (including allegations that all three of them were members of organised crime groups, "OCGs"), as well as pretty much all major political and business players of the era, from Presidents Yeltsin and Putin down.

2) In any event, none of the allegations made by Mr Deripaska – which are pleaded in Schedule 3 to the Amended Defence[8] – has a direct bearing on the real issue, namely whether Mr Cherney imposed a *krysha* arrangement upon Mr Deripaska. These allegations will doubtless form the primary focus of Mr Deripaska's legal team during the course of the trial. But it is difficult to see, for example, how an allegation that Mr Cherney purchased false passports takes Mr Deripaska's case anywhere. These allegations throw little or no light on the relationship between Mr Cherney and Mr Deripaska.

3) On the specific issue of whether Mr Cherney imposed a *krysha* arrangement upon Mr Deripaska, it is striking how, despite how his evidence has evolved, being amplified and developed, even in its latest incarnation little, if any, evidence has been provided of direct threats made to Mr Deripaska by Mr Cherney. As explained more fully in Annex 1 to these submissions, Mr Deripaska's *krysha* allegations have developed in a chaotic, piecemeal, and inconsistent manner, which is redolent of a reactive, *ex post facto* reconstruction based on the demands of the case and the shape of the available evidence, rather than a reflection of any threat made, or which Mr Deripaska at any rate perceived, at the relevant time. In particular, if Mr Deripaska had genuinely been subjected to an extortion racket for over five years, why did the far-reaching allegations which he now makes against Mr Cherney not feature either in February 2008, when he served his jurisdiction witness statement,[9] or in 22 March 2010 when he first served his Defence?

4) In his third witness statement served in December 2011 Mr Deripaska introduced an allegation that Mr Cherney imposed a *krysha* upon TWG, which was reflected in amendments to his Defence served in January 2012.[10] This was a remarkable *volte face*. In his

8 {2/4/44J}

9 {8/2/4}

10 Deripaska3, paras 33, 166, 289-296, 354-357 and 469-470 {8B/27/565} , {8B/27/602} , {8B/27/642} - {8B/27/644} , {8B/27/660} - {8B/27/661} and {8B/27/690} ; Amended Defence, Schedule 3, paras 2.3.6-2.3.7 and 15{2/4/44M} - {2/4/44N} and {2/4/44S}

evidence, Mr Deripaska now says that he was told about this arrangement by Mr Cherney and Mr Malevsky in 1995 and again in 2001.[11] If that is correct, why was this allegation raised by Mr Deripaska so late in the day, especially since Mr Cherney's partnership with TWG has been in issue since the jurisdiction stage of these proceedings?[12] Indeed, why had his evidence previously been to the opposite effect? It is reasonable to infer that Mr Deripaska recognised the danger of the Court accepting Mr Cherney's evidence about this: if Mr Cherney had a legitimate relationship with the Reubens in the aluminium business, how likely is it that at the same time he was imposing a krysha on Mr Deripaska? If the Reuben brothers thought that Mr Cherney's influence and contacts[13] merited partnership with Mr Cherney and the (very successful) mutual pursuit of a joint aluminium business, then is it surprising that Mr Deripaska saw similar benefits?

5) There is a considerable body of evidence which shows that, far from being subjected to a *krysha*, Mr Deripaska in fact enjoyed an amicable relationship with Mr Cherney, Mr Malevsky and Mr Popov. The photos and videos of Mr Deripaska attending weddings and birthday parties with these men, accompanying them on holiday, enjoying social and business occasions with them, will leave no doubt that his entire *krysha* case is a fiction. Indeed, Mr Deripaska made Mr Popov the godfather of his daughter (born in 2003) after the purported termination of the alleged *krysha*, and has continued to socialise with Mr Popov even since the commencement of this litigation. Again, Mr Deripaska's explanation that nothing is what it appears to be is redolent of Lewis Carroll. Can such fulsome social interactions really plausibly be brushed aside as an aspect of some "sophisticated" "*krysha* ritual" or are they, more simply, what they appear – socialising between friends and business partners?

Agreement No 1 and Supplement No 1

10. In order to determine the central issue of what was the nature and content of the agreement concluded between Mr Cherney and Mr Deripaska at the Lanesborouogh Hotel on 10 March 2001, and in particular whether Supplement No 1 formed part of that agreement, the Court will have to consider and to assess a large amount of evidence about their relationship between 1993 and 2001. Inevitably, there is a great amount in dispute (though the amount that is not in dispute is also telling – in that Mr Deripaska has been forced by the evidence to accept the accuracy of much of Mr Cherney's account). Many of these issues in dispute will need to be determined by the Court in due course. At the outset, however, it is fair to state that there are a number of simple and straightforward points that can be made about Agreement No 1 and Supplement No 1 which provide powerful pointers as to where the truth lies in this case:

11 Deripaska3, paras 296 and 470 {8B/27/644} and {8B/27/690}

12 Cherney1, paras 16-20 {7/1/7} - {7/1/9}

13 In this context, it is worth emphasising that in the immediate aftermath of the fall of communism, personal contacts with political, governmental and industry figures were essential to those seeking to acquire and to exploit business interests. Mr Cherney's contacts are discussed further below in Section B.

1) By 2001 Mr Deripaska says that he had "*a very good security service*" and "*good relations with Governmental authorities at all levels as well as with law enforcement agencies*".[14] But then why did he pay anything at all to Mr Cherney to terminate the supposed *krysha* arrangement? There are a number of points here:

   a) Why would anyone, let alone anyone as intelligent and successful as Mr Deripaska, think that they could pay to end an extortion racket. If one wishes to terminate an extortion racket, one terminates it; paying to do so would only prolong it.

   b) More specifically to this case, why would Mr Deripaska, given the position he had attained by 2001, make any payment to his OCG extortioners, rather than just cutting them off? By March 2001, Mr Deripaska had a place at the very heart of Russia's elite – the business partner of Mr Abramovich, the son-in-law to Valentin Yumashev and his wife, Tatiana Yeltsin. From such a position of power, is it credible that Mr Deripaska would have paid to terminate a *krysha* relationship, still less that he would still have been making payments pursuant to such a termination agreement in 2004.

   c) These points arise in the abstract, but it is important to bear in mind the facts of this purported *krysha*. On Mr Deripaska's own case, he had not made any *dolya* payments since November 1999.[15] In 2000, the supposed extortioners had made paid significant sums into the business. A payment of US$250 million to Mr Cherney in March 2001 would have represented the first payment in nearly a year and a half and a payment more than twice what Mr Deripaska claims to have paid in total in *dolya* to all three of his extortioners from the start of the *krysha* in 1995 to November 1999. A total payment of in excess of $410 million (including the $173 million allegedly paid to Mr Malevsky and Mr Popov to terminate the *krysha*) would have represented nearly four times what had been paid to date in total.

2) If Mr Cherney and Mr Deripaska really were never partners, and if Agreement No 1 was intended by Mr Deripaska to disguise the final *dolya* payment to Mr Cherney, given the infinite variety of sham agreements available to Mr Deripaska, why on earth did Mr Deripaska choose to refer to a sale by Mr Cherney of shares in Sibal, the very business which Mr Cherney had allegedly sought to infiltrate over a number of years?

3) If the money paid to Mr Cherney under Agreement No 1 represented the final *dolya* payment, why did Mr Cherney immediately loan some of it back to Mr Deripaska in 2002?

4) If Supplement No 1 was intended to disguise an agreement reached with Mr Malevsky,

[14] Deripaska3, para 467 {8B/27/689}
[15] See Schedule 4A to the Amended Defence {2/4/44BE}

similar questions arise as to how it came to be that Mr Deripaska, with the freedom to draft whatever agreement he chose to conceal payments to Mr Malevsky, decided to draft the agreement in the way he did. In particular:

a) Why is it expressed to be supplemental to, and in fulfilment of, Agreement No 1 – an agreement to which Mr Malevsky was not a party?

b) Why does Supplement No 1 refer to 20% of the shares in Rusal, a figure which is entirely consistent with the Syndikus and Radom Foundation documentation (which Mr Deripaska is at pains to dismiss) and also with Mr Cherney's case as to what he would have been entitled to in the merged Sibal/Sibneft business by virtue of his 40% interest in Sibal?

c) Why does Supplement No 1 contain a formula for payment by reference to 20% of the value of Rusal from which is to be deducted US$250 million, i.e. the sum payable pursuant to Agreement No 1 if that formula was not intended to determine the sum to be paid?

d) Why are "Party 1" and "Party 2" not defined in Supplement No 1 as being Mr Malevsky and Mr Deripaska respectively? Why is Supplement No 1 not signed by Mr Malevsky? Why does Supplement No 1 make no mention of or provision for Mr Popov, since on Mr Deripaska's case it was supposed to terminate a *krysha* arrangement with him (and one assumes, the Podolskaya OCG) too?

e) Most importantly, why would Mr Deripaska, anything but a fool, do something so foolish as to hand over to his alleged extortioners, of his own volition, documents which on their face corroborated claims that the alleged extortioners were shareholders in the aluminium business and, pursuant to Supplement No 1, entitled to 20% of the value of Rusal?

5) Why is Mr Deripaska's account of the meeting at which he allegedly gave a copy of Supplement No 1 to Mr Malevsky in Moscow so vague,[16] especially when compared to his description of his meeting with Mr Cherney on 10 March 2001?

6) Why did Mr Deripaska not repudiate the press articles which appeared in March 2001 quoting Mr Cherney and reporting that Mr Deripaska had agreed to buy out Mr Cherney's interest in their joint business in terms which were clearly redolent of Supplement No 1?[17]

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16 Deripaska3, paras 510-512 {8B/27/700}

17 By way of example, see: Vedomosti Article of 28 March 2001 {135/1/164A} ; Thomson Reuters Article of 30 March 2001 {135/1/165}

7) In July 2002 an accountant employed by Mr Cherney, Mr George Philippides, sent an email to one of Mr Deripaska's legal advisors called Mr Stalbek Mishakov in which he stated that the payment of US$250 million did not fully reflect the agreement which Mr Cherney and Mr Deripaska had reached on 10 March 2001. Mr Philippides specifically referred to the fact that Mr Deripaska had agreed to pay "*a further amount based on the market value of Russian Aluminium (RusAL), Sibirskiy Aluminium's successor, calculated as 20 per cent of the market value of Russian Aluminium less US$250 million. The market value is to be calculated as the average price of shares sold to third parties. The payment is to be settled within five years of the date of the agreement*".[18] Why did Mr Deripaska not respond by stating that Supplement No 1 had nothing to do with Mr Cherney and denying Mr Cherney's entitlement to be paid anything thereunder?

8) Since it was apparent during 2001 and 2002 that Mr Cherney was claiming rights under Supplement No 1, if that document was never given to him and represented the purported termination of a *krysha* then why did Mr Deripaska, as he alleges, continue to make payments of US$170 million pursuant to Supplement No 1 to Mr Malevsky (or his alleged associates, he being dead) and Mr Popov between 2002 and 2004? Why did Mr Deripaska not complain at any time to any of the alleged representatives of the alleged OCGs that the deal to terminate the *krysha* was not being honoured?

9) When Mr Deripaska obtained a copy of Supplement No 1 in 2005 or 2006[19] and lawyers acting for Mr Cherney faxed a copy of Supplement No 1 to him in May 2006,[20] why did Mr Deripaska not reply or instruct Mr Hauser, who advised him in relation to it,[21] to reply saying that he had never given that document to Mr Cherney, that it was not an agreement concluded with Mr Cherney and that Mr Cherney had no rights under it?

10) Why, if Mr Cherney was never his partner and if Mr Deripaska had not agreed to buy him out in March 2001, did Mr Deripaska's lawyer state in a letter to the Swiss Magistrate dated 9 February 2005 that "*In 2001 Mr Deripaska purchased the economic rights which Mr Michael Cherney owned in the Sayansk plant*"?[22]

11) Why, at a hearing on 9 February 2007, did Mr Deripaska's then Leading Counsel tell Mr Justice Tomlinson that the status of Supplement No 1 was "*still being investigated*"?[23] If Mr Deripaska's case was that he had prepared Supplement No 1 to give to Mr Malevsky and that he had in fact given it to Mr Malevsky in March 2001 and not to Mr Cherney then that ought

18 {28/1/148} - {28/1/149}
19 Response 4 of Mr Deripaska's further information of 25 May 2012 {2A/17/498} - {2A/17/499}
20 Weinroth1, para 13 {7E/42/1226} . The letter sent by Mr Weinroth is at {18D/1/279} - {18D/1/283}
21 Hauser4. para 92 {8/3/51}
22 {31B/75/760}
23 {5J/21/2177}

to have been readily explicable. In particular:

a) Bearing in mind that Mr Deripaska had been aware on any view of Mr Cherney's claims based on Supplement No 1 for a number of years, what "investigation" was required to reveal that Mr Deripaska had prepared Supplement No 1 to give to Mr Malevsky and had in fact given it to him?

b) In any event, why would such investigation inhibit Mr Deripaska explaining his current case as to the provenance of Supplement No 1 (of course, if that had then been his case)?

12) Why has Mr Deripaska not produced his original set of Agreement No 1 and Supplement No 1? Is it really plausible that he would not have kept safe these documents – which even on his own case were plainly important documents?

11. These questions, and a great host of other obvious ones that have been live from the outset of this litigation, will have to be explored at trial with Mr Deripaska, and his answers to them are eagerly awaited. To date, Mr Deripaska's evidence, and the case advanced on his behalf, for all their evolution and development, have notably failed to grapple with, let alone satisfactorily answer, such issues.

Structure of these submissions

12. These submissions go on to cover, at an introductory level of detail, the main elements of the claim, both legally and factually. The submissions proceed thematically and (broadly) chronologically under the following headings:

1) The formation of the partnership;

2) The events of 1994;

3) 1995-1997: Tradalco and TWG;

4) Mr Cherney's contribution to the partnership;

5) The balance sheets;

6) The role played by Mr Makhmudov;

7) Syndikus and the role of the Radom Foundation;

8) The alleged *krysha* arrangement and *dolya* payments;

9) Allegations of criminality made against Mr Cherney and third parties;

10) 2000-2006, and in particular the events of 10 March 2001;

11) Analysis of the Agreement and the relief sought by Mr Cherney.

B. FORMATION OF THE PARTNERSHIP

13. The protagonists provide very different accounts of the nature of their first meeting and what, if anything, was agreed. Mr Cherney says that he first met Mr Deripaska in October 1993 at a London Metal Exchange ("LME") reception in London.[24] Mr Deripaska claims that the first meeting took place in May 1994 at a private dinner at the Sheraton Park Tower Hotel in London.[25] Before turning to these disputes, it is first necessary to consider the position of Mr Cherney and Mr Deripaska at the date of their first meeting (whether October 1993 or May 1994).

The position of Mr Cherney when he met Mr Deripaska

14. It is Mr Cherney's case that by the time he met Mr Deripaska, he was already a very wealthy and well-connected businessman with extensive business interests in the former CIS, in particular in the metals industry. Mr Deripaska contends that Mr Cherney was never a businessman, but someone powerfully placed in the Russian criminal world who derived money from criminal activity. It is implicit in Mr Deripaska's case that Mr Cherney's "business activities" before he met Mr Deripaska were either shams for the laundering of criminal proceeds, or themselves protection rackets in which Mr Cherney extracted money from legitimate businesses by threat of force and making no real contribution. If the Court is satisfied that Mr Cherney had an extensive business, and business connections, when he met Mr Deripaska, then it makes Mr Cherney's account of their relationship much the more likely: both that Mr Deripaska would want a partnership with Mr Cherney, and that those many aspects of Mr Cherney and Mr Deripaska's relationship which look like a legitimate business relationship are indeed precisely that, rather than some improbably subtle and sophisticated *krysha*. If Mr Cherney had legitimate and substantial business relations with Sam Kislin, with TWG, and with Iskander Makhmudov, how likely is it that alongside – and in the case of the latter two, at the same time as – those relationships, he had a relationship with Mr Deripaska that was not one of partnership, but rather was one in which Mr Cherney was imposing a *krysha* on Mr Deripaska (such that both he and Mr Deripaska were only pretending to be partners)?

Early business activity

15. Mr Cherney describes his early business activity at Cherney6, paras 6-24.[26] One of these early joint ventures involved Lora Vidinlieva and Yacob Goldovsky. The Court will hear from Ms Vidinlieva who first met Mr Cherney in 1985 or 1986 and who was involved in a joint venture with him from 1987.[27] Mr Goldovsky remained a business associate of Mr Cherney, and visited him in Israel.[28] Mr

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24 Cherney6, paras. 122-135 {7A/6/246} - {7A/6/252}
25 Deripaska3, paras.140-146 {8/27/594}
26 {7A/6/202} - {7A/6/207}
27 {7A/6/280} - {7A/6/289}
28 {21/1/26}

Goldovsky described this early business in an interview in *Biznes reputatsia* on 8 November 2005.[29]

Trans Commodities and metals business prior to October 1993

16. Mr Cherney had a substantial business partnership with Ukrainian-American Mr Sam Kislin which was involved in extensive trading before it came to end. Mr Deripaska's response to this relationship has varied somewhat:

    1) The Third Witness Statement of Ms Prevezer exhibited numerous articles suggesting that Mr Kislin was himself associated with OCGs[30] and Ms Prevezer referred to an allegation that Mr Kislin was *"a close associate of an imprisoned Russian godfather"*.[31] When pressed as to whether it was being suggested that Mr Kislin, and the Reuben Brothers in respect of whom similar articles were exhibited, were criminals, such a case was disavowed in respect of the Reubens but not Mr Kislin.[32]

    2) There was also a suggestion that Mr Kislin may himself have been a victim of a *krysha* from Mr Cherney, Ms Prevezer referring to "*a distinct pattern*" in Mr Cherney's relationship with Mr Kislin, Mr Makhmudov, the Reuben Brothers and Mr Deripaska.[33]

    3) Mr Deripaska's supplemental evidence includes a statement from Mr Kislin to the effect that Mr Cherney was paid by him to provide protection and was not a businessman, and other similar statements.[34] Mr Deripaska refers to various conversations he has himself had with Mr Kislin (it would seem recently) and gives Mr Kislin a ringing endorsement: "*I know Sam Kislin to be a sensible guy*".[35]

17. It seems unlikely that Mr Deripaska will remain of this view. It is quite clear that insofar as it is adverse to Mr Cherney, Mr Kislin's evidence is wholly unreliable. This issue – and the numerous previous inconsistent statements by Mr Kislin, statements that he was threatened that his business interests in Russia would be damaged if he assisted Mr Cherney in this litigation, and his own request for a financial bonus from Mr Cherney in return for evidence which it was said would ensure that Mr Cherney succeeded – will have to be explored in evidence with Mr Kislin, as will the question of what inducements he has received or been promised in return for giving evidence for Mr

29 {135B/1/632}
30 The position was summarised in Hearn 11, para.244 {151D/1/1148}
31 Para 29(d) {151C/1/803}
32 Para115 of the skeleton for the hearing on 14/15 December 2011 {6A/10/511}
33 Para 381 {151C/1/917}
34 Kislin1, *passim*. {8D/38/1230}
35 Deripaska4, para.79.1(iii) {8F/64/1632}

Deripaska.[36]

18. What is noticeable, however, is that even in his statement for Mr Deripaska, Mr Kislin does not suggest that he was ever threatened by Mr Cherney or that a *krysha* was imposed on him under which payments were extracted from his business. Instead he says that he asked Mr Cherney to protect his business from organised crime and "*to provide local assistance in ensuring that contracts were being performed*" in return for commission.[37] He says that a number of the business contacts which Mr Cherney claims to have introduced to Mr Kislin were in fact Mr Kislin's contacts to whom Mr Cherney was introduced. He complains that Mr Cherney appropriated to himself the business and governmental contacts which Mr Kislin had established and that "*Mr Cherney used my name, my relations with these people and their goodwill towards me for his own purposes*". [38] In short, Mr Kislin appears to accept that by the time he met Mr Deripaska, Mr Cherney had extensive business and contacts in the metals and allied sectors in Russia, albeit he claims that they had all been acquired through him.

19. Mr Kislin and Mr Deripaska have cast doubt on the authenticity of various contracts produced by Mr Cherney relating to business conducted before he met Mr Deripaska which were on Syndikus' files and which have been disclosed. In relation to a number of those transactions, Mr Kislin's complaint appears to be that although the name "Trans Commodities" or similar features in documents or payments, his company was not involved, and that this was Mr Cherney, Mr Makhmudov and others exploiting his name. In relation to other contracts, it is suggested that the documents are forgeries. These issues will be explored in evidence.

TWG and aluminium

20. TWG, created by the brothers David and Simon Reuben, has an important role in both sides' cases. Mr Cherney says that he and his brother Lev entered into partnership with them in 1992, undertaking extensive trading with them and acquiring extensive interests in the aluminium industry with them, until his break from them in 1997. Mr Deripaska accepts that when he first met Mr Cherney, he understood him to be in partnership with TWG, but in a late change of case, he now claims that he understood since at least 1995 that Mr Cherney's relationship with TWG was not a legitimate business relationship, but one in which Mr Cherney and others imposed a *krysha* upon TWG in conjunction with Russian OCGs. Mr Deripaska has been forced to adopt this case because of the impossibility of the alternative – that whilst Mr Cherney was a partner of TWG in its Russian aluminium business, with the extensive influence, contacts and wealth that would entail, his involvement with Mr Deripaska's aluminium business was not legitimate business, but extortion.

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36 The subject is covered in Cherney10 and Hearn18 {7D/10/775} , {7E/46/1263} . In the evening of 20 June 2012, the Defendant served a second statement from Mr Kislin, which contains Mr Kislin's best efforts to explain away the evidence in, and contemporaneous documents referred to in, Cherney 10 and Hearn18.

37 Kislin1, para 22 {8D/38/1235}

38 Kislin1, paras 39 and 46 {8D/38/1239} and {8D/38/1241}

21. The TWG story is considered further below. For the present, the Court is asked to note the extensive trading between Mr Cherney's entities, Blonde and Hiler Establishment, and TWG by the time Mr Cherney met Mr Deripaska. Mr Kessler recalls Mr Cherney's extensive dealings with TWG when he began working for him in October 1992.[39] Mr Staeger of Syndikus recalls payment receipts from TWG before May 1993,[40] and in June 1993 he went to London and met the Reuben Brothers in company with Mr Cherney and his brother, at which the plans to sell Russian aluminium on the LME were explained.[41] Mr Kessler's schedules prepared in 1994 show extensive trading with TWG, with contract numbers and vessels identified, on the records of Furlan Anstalt, Blonde and Hiler Establishment.[42]

Other businesses and investments

22. Before he met Mr Deripaska, Mr Cherney already had an extensive copper business. A spreadsheet prepared by Mr Kessler called "*copper.xls*" identifies numerous contracts,[43] a number of which survive. Mr Cherney's manager and eventual partner in that business was Mr Makhmudov: an important figure in the case and now one of Russia's richest men. Mr Deripaska accepts that he had extensive legitimate business and socials dealings with Mr Makhmudov. He does not suggest that Mr Makhmudov was engaged in any criminal behaviour or was anything other than a legitimate businessman. There are numerous documents showing a close working and social relationship between Mr Cherney, Mr Deripaska, and Mr Makhmudov which leave no room for the possibility that Mr Deripaska was the victim of Mr Cherney's *krysha* and yet had a business relationship with Mr Makhmudov.

23. Mr Cherney had numerous other assets as well as his metal interests. He had acquired a substantial shareholding in the Podolsk sewing machine factory in 1991 or 1992 which was sold in August 1994.[44] He had acquired extensive real estate interests in the United States. The Court will hear from Stuart Gross of Roberts & Holland, the law firm who acted in many of those transactions. Mr Kessler recalls that Mr Cherney had US$36 million invested in US real estate in 1993 and 1994.[45] Mr Nolan will give evidence of real estate purchases by Mr Cherney in Shore Boulevard Brooklyn, condominiums in Brighton Beach, Boca Raton, and Manhattan Beach.

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39 Kessler1, para.27 {7D/24/990}

40 For an example see the payment of US$1.8 million paid to CCT on 21 April 1993: {72/8/180}

41 Stäger1, para 9 {7E/38/1164}

42 See {67C/15/985} - {67C/15/987}, {67C/15/995} , {67C/15/1009} , {67C/15/1012} , {67C/15/1014} , {67C/15/1017} , {67C/15/1018} , and {67C/15/1046} - {67C/15/1047} among many other examples. A number of the TWG contracts survive. They can be added to the bundles if necessary.

43 {67C/15/985}

44 The sale contract is at {84B/9/833}. A payment made to the law firm Weil Gotshal concerning "Podalsk" on 22 April 1994 is at {92/6/115}

45 Kessler1, paras.30-32 {7D/24/991}

Contacts

24. Contacts – in national and regional government, in the transportation network, with the suppliers of raw materials or equipment or those who licensed exports – were essential to those looking to succeed in business in the aftermath of the break-up of the Soviet Union. Before he met Mr Deripaska, Mr Cherney had acquired an impressive and extensive list of such contacts,[46] keeping key individuals "on side" through payments on credit cards issued by his Liechtenstein entity Republic Establishment, paying for holidays and travel through shared business interests. Mr Deripaska's supplemental statement takes a high moral tone, but as will be seen in the course of the evidence, this was the reality of doing business in the chaos of the post-Soviet economy.

25. These connections included Mr Generalov, Mr Yaroslavsky, and Mr Yafyasov, all of whom visited Florida at Mr Cherney's expense in July 1994[47] and were flown first class from Prague to New York by him.[48] Mr Yafyasov and Mr Generalov were members of the State Committee for Metallurgy in 1993-1994.[49] Mr Yafysov was issued with a credit card by Mr Cherney's entity Republic Establishment,[50] and was appointed to his role following a recommendation and request made by Mr Cherney to Mr Soskovets.[51] Mr Generalov played a key role in the decision to privatise Saaz in 1993.[52] He had a credit card from another Syndikus administered entity – Yatana Establishment – into which Mr Cherney made payments.[53] Another Government minister with such a credit card was Mr Serafim Afonine, who was another major figure in the Russian metallurgical industry.[54] Mr Afonine was deputy chairman of the Committee of the Russian Federation on Metallurgy from 1992 to 1996, then its chairman (on the recommendation of Mr Soskovets) and from August 1996, Deputy Minister of Industry.[55]

26. Mr Soskovets too was a key contact.[56] Oleg Soskovets was the Minister of Metallurgy of the Soviet

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46 As noted above, Mr Kislin confirms the existence and positions of many of these individuals, but complains that Mr Cherney acquired them from him.

47 {22/1/1}

48 {67B/14/814}

49 *Kommersant* 12 April 1995: {135B/1/464} This committee was a successor to the Ministry of Metallurgy. The Court will have to consider what weight to attach to Mr Deripaska's criticsm of Mr Cherney's use of terminology at Deripaska4, para 20 {8F/64/1613} (and see Cherney6, para 47 {7A/6/214}

50 {118T/65/5705}

51 Cherney6, para 56 {7A/6/218}

52 {38/1/78}

53 Mr Deripaska claims he formed his "*good relationship*" with Mr Generalov independently of Mr Cherney, but it is noticeable that although Mr Deripaska obtained a letter from Mr Generalov as part of his supplemental evidence, that letter does not address Mr Cherney's relationship with Mr Generalov nor Mr Generalov's understanding of Mr Cherney's relationship with Mr Deripaska: Deripaska4, para.120 {8F/64/1645} and {151A/1/337}

54 See e.g. the payment of US$400,000 to Yatana for "septo B" on 11 July 1994 from Blonde and Mr Kessler's fax to Mr Domenjoz of 6 July 1994 {67B/14/821} , the payment ordered on 22 February 1994 in the fax from Blonde Management to Mr Staeger {67B/14/822} , and the payment of US$900,321.20 made by Furlan Anstalt via ICC on 7 December 1994 {142A/5/486} : see the Furlan debit note of that date which matches the instruction on {142A/5/486} .

55 {135B/1/676A}

56 Another person falling in a similar category to Mr Soskovets was Shamil Tarpishchev, whom Mr Cherney knew (as Mr Deripaska accepts – Deripaska4, para 71 {8F/1/1629} . He was described thus in para 57 of

Union when Mr Cherney met him in 1991, having previously been director of the Karaganda Metallurigical Combine. With Mr Cherney's assistance, he later became Deputy Prime Minister of Russia. He was a key ally both in the privatisation of the Russian metal industry and in ensuring a favourable fiscal and regulatory climate for metal trading. He also had a credit card through Yatana Establishment into which Mr Cherney made payments.[57] Mr Deripaska has apparently spoken to Mr Soskovets, who is, we are told, *"furious"* at the suggestion that Mr Cherney had any involvement in his appointment as First Deputy Prime Minister.[58] However, the connection between Mr Cherney and Mr Soskovets, and the benefits derived from it, were the subject of extensive (critical) comment in Russian newspapers.[59] The relationship was sufficiently close for suggestions to be made that Mr Deripaska was Mr Soskovets' nephew.[60]

27. Mr Yaroslavsky was a Ukrainian businessman and politician, who can later be seen staying with Mr Deripaska and his employee Mr Andrey Karklin in August, November and December 1997 and with Mr Cherney in January 1998.[61] The wife of Mr Gromov, director of the Bratsk aluminium plant, had a credit card with Republic Establishment,[62] as did another director of that plant, Mr Yuri Shlyafstein and his wife.[63] Mr Vladimir Lisin, Mr Sokovets' deputy at the Karaganda Steel mill, a key TWG employee and player in the Russian metals industry and now one of the richest men in Russia, had a Republic Establishment credit card[64] and received US$1,990,000 from Mr Cherney's company Furlan Anstalt, of which he acknowledged receipt on 5 January 1995.[65] Mr Alexi Lapshin, now President of NLMK (the Novolipetsk Steel Plant), also had a Republic Establishment credit card, as did his wife.[66]

28. Quite apart from the contacts and status that derived from his role as a partner in TWG (which should not be underestimated), Mr Cherney had extensive business contacts. For example, Mr Cherney had undertaken extensive business with Gerald Metals, a company owned by Mr Gerald

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Cherney6: "*Mr Tarpischev was until 1997 one of the closest people to President Yeltsin. He was his close friend, his private tennis coach, held the position of adviser to the President on sport and headed Russia's Committee on Sports (giving him a position similar to that of a Minister) and so had regular access to the President and to his administration*" {7A/6/219}

57 Yatana account C: see Hiler Establishment debit advice of 23 February 1994 {92A/9/401A} ; Blonde Management to Mr Staeger of 22 February 1994 {92A/9/401A} - {92A/9/401C}.

58 Deripaska4, para123 {8F/64/1646} . For Mr Cherney's account of his role in the appointment, see Cherney3, paras 154-157. It is notable that, despite the fact that Mr Deripaska claims in his supplemental statement to have '*personally raised the assertions made by Mr Cherney with Mr Soskovets*' {8F/64/1646} , nothing has apparently been said by Mr Soksovets about their relationship, the assistance he provided Mr Cherney, the credit card he had or anything of that sort.

59 See e.g. *Sovetskaia Rossiia* of 13 February 2007 saying that the Cherneys had paid for the wedding of Soskovets' daughter, given the newlyweds valuable presents and opened Swiss bank accounts and AMEX cards for Soskovets and his son Aleksei: {135B/1/477}

60 See speech in the Dumas from Deputy Loginov: {36B/9/688}

61 For 1997 – see {101A/6/412} . For 1998 – see {21/1/49} .

62 {118Y/93/7196}

63 {118S/61/5580} and {118S/62/5608}

64 {118S/52/5442} - {118S/52/5443}

65 {48/1/57} : the payment was made by four cheques of US$250,000 and three of US$300,000.

66 {118R/36/5136} - {118R/36/5148}

Lennard, long before Mr Deripaska began to transact business with Gerald Metals. There are large value contracts between Blonde and Gerald Metals in the disclosure[67] and the cashflow statements for Blonde show many millions of dollars of payments from Gerald Metals in 1994. Mr Kessler will give evidence of translating at business meetings between Mr Cherney and Mr Lennard of Gerald Metals.[68] Mr Cherney says that he introduced Mr Deripaska to Mr Lennard.[69] Mr Deripaska says that he started trading aluminium with Gerald Metals in the second half of 1997, and that he had "*direct contacts with Gerald Metals prior to 1997, independently of Mr Cherney*",[70] but notably he fails to respond directly to the allegation that Mr Cherney introduced him to Mr Lennard.

29. Other key connections of Mr Cherney included Kazakh businessmen and the management at the Pavlodar Alumina Plant in Kazakhstan. Mr Cherney did extensive business with the Kazakh trade entity Otyrar[71] and with the Pavlodar plant itself.[72] Mr Bekhet Makhmutov of Otyrar had a credit card from Republic Establishment.[73] Directors of the Pavlodar Alumina plant included Mr Baltabek Akimkoulov and Mr Salavat Tourakbaev. Mr Akimkoulov had a Republic Establishment credit card,[74] as did Mr Damir Tourakbaev, Mr Tourakbaev's son.[75]

The position of Mr Deripaska at the time of his first meeting with Mr Cherney

30. Mr Deripaska's account of his position is said to render implausible the suggestion that he would have formed a partnership or any other business relationship with Mr Cherney at, or shortly after, their first meeting. Mr Deripaska's position is summarised by two stark assertions in his pleadings and evidence:[76]

> "*In these circumstances [Mr Deripaska] was in a strong position [by the time Mr Deripaska met Mr Cherney], and had no need or desire for a business partner, let alone a person such as Mr Cherney …*"
>
> "*Following Mr Deripaska's election as General Director of SAAZ [on 15 November 1994], for the reasons shortly summarised above, Mr Deripaska had no need for investment from Mr Cherney or from anyone else*".

31. The credibility of Mr Deripaska's position can be tested by reference to the extremely compressed chronology to which Mr Deripaska is confined, by Mr Deripaska's own evidence and documents, and by the striking absence of detail in Mr Deripaska's evidence as to his aluminium assets and

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67 See contracts of 6 March 1994 {67C/15/1010A} and 11 November 1994 {67C/15/1008A} (the latter is signed by the Claimant)
68 Kessler 1, para28 {7D/24/990}
69 Cherney6, para 69 {7A/6/225}
70 Deripaska4, paras 90-92 {8F/64/1636}
71 There are numerous references to Otyrar in the Kessler schedules, e.g. {67C/15/1037}
72 See e.g. 19 January 1993 transaction referred to at {47F/100/1574}
73 {118R/41/5217}
74 {118R/44/5289}
75 {118R/3503}
76 Deripaska3, para18 {8B/27/568} . See also para.4(c) of Mr Deripaska's Further Information of 5 August 2011: {2A/13/378} – {2A/13/379} .

contacts within the industry.

32. According to Mr Deripaska's own evidence and documents:

1) By 1990 Mr Deripaska was earning no more than approximately US$3,000/year.[77]

2) In 1991 Mr Deripaska invested his savings (amounting to approximately US$2,500) to start up his first company whilst he was still a physics undergraduate at Moscow State University.[78]

3) On 17 July 1991, Mr Deripaska's first company was incorporated.[79]

4) On 2 October 1992, Mr Deripaska's first foreign company, Allpro, was incorporated in Cyprus for the purpose of international trade.[80]

5) In 1993, by now aged 25, Mr Deripaska graduated from Moscow State University.[81]

33. It is against that chronology that the Court must consider the probabilities of Mr Deripaska's account as to his position as an established businessman in the aluminium industry at the time he first met Mr Cherney.

34. In his Amended Defence, Mr Deripaska asserted at paragraph 2.1.1 that he "*was the largest private shareholder in the Sayansk Aluminium Plant [SaAZ] prior to meeting Mr Cherney*". In fact, the share to which Mr Deripaska was referring constituted approximately 10% of the total shareholding of SaAZ, was purchased for less than US$1,000,000 and no evidence as to the source of funds has ever been provided by Mr Deripaska.[82] In addition, Mr Deripaska has provided no details of the extent of or the price paid for his alleged shares in NkAZ, KrAZ, Achinsk Alumina Plant, and Krasnoyarsk Metallurgical Plant prior to meeting Mr Cherney.[83] Moreover, Mr Deripaska has failed to identify a single significant contact which he had developed within the aluminium industry prior to meeting Mr Cherney.

35. The frailty of Mr Deripaska's position within the aluminium business at around the time of his

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77 Deripaska3, para.49 {8B/27/568}

78 Deripaska3, para.49 {8B/27/568}

79 Deripaska3, paras 51 {8B/27/569} and 54 {8B/27/570} and {130/1/1} - {130/1/6}

80 Deripaska3, para 72 {8B/27/565}. An earlier version of Mr Deripaska's curriculum vitae states that between 1991 "*the main activities of the [Deripaska] group were trading operations with sugar and seed at the Moscow Commodity Exchange… and at the Russian Exchange for Goods and Raw Materials'* and that at the same time *'the group performed trading with small quantities of metals (copper, aluminium)"*" {151/1/166} .

81 This appears from Mr Deripaska's current biography on the Basic Element website: http://www.basel.ru/en/about/leadership/director/.

82 The sums paid for the acquisition of shares in SaAZ together with the absence of evidence to support the sums paid is referred to in Appendix F of the report of Mr Haberman, Mr Deripaska's accountancy expert {17L/75/3015} – {17L/75/3018} .

83 Deripaska3, para 106 {8B/27/584}

meeting Mr Cherney was exposed at the annual shareholders' meeting on 22 October 1993 at SaAZ (the focus of Mr Deripaska's efforts at the time). At that meeting, Mr Deripaska nominated himself as a director but was decisively rejected by approximately 75% of shareholders. Following that vote, Mr Deripaska was advised by Mr Yafyasov (who was then assistant to the Deputy Minister of Metallurgy following Mr Cherney's intervention, as discussed in parapgraph 25 above) that "*in order to make progress at the plant [he] needed to have international trader support*".[84]

36. Finally, in considering Mr Deripaska's case that he had no need of Mr Cherney's support and help in 1994, it is interesting to note the terms of a document prepared by Mr Deripaska's lawyers in proceedings brought by TWG in response to the suggestion that Mr Deripaska intended to take control of the Russian aluminium market. The document stated that:[85]

> "*At the age of 26, Mr Deripaska had neither the political nor the economic resources necessary for such an undertaking*".

Mr Cherney's meeting with Mr Deripaska and their partnership

When did Mr Cherney and Mr Deripaska meet?

37. As noted, Mr Cherney says that he first met Mr Deripaska, and reached an agreement to become partners with him, at an LME reception in London in October 1993.[86] He dates the meeting because he is convinced he met him at the LME event which takes place in October every year, and he did not come to the UK between 21 May 1994 and August 1998. The LME "metals week" did indeed take place in October 1993, beginning on 11 October with a dinner on 12 October 1993.[87] Mr Cherney's passport shows that he arrived in London on 9 October 1993.[88] He can be seen spending in London in the week beginning 11 October 1993.[89] Mr Buriak, who also attended this event, recalls Mr Deripaska's presence and confirms Mr Cherney's account.[90] It is clear from Mr Lisin's credit card that he too was in London, flying out on 13 October 1993.[91] Mr Deripaska has not disclosed passports for this period, which it is said cannot be found, nor any other documents that allow his movements to be established.

38. Mr Deripaska says that he did not attend the LME event in October 1993, and that he was recovering from a car accident in the summer of 1993 and so unable to travel to London for the

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84 Deripaska3, para 110 {8B/27/585}
85 {31B/79/843AJ}
86 Cherney 6, paras.122-139 {7A/6/246} - {7A/6/254}
87 {135B/1/443}
88 {20/1/7}
89 {22/1/7L}
90 Buriak1, paras.6-7 {7D/17/870} - {7D/17/871}. He recalls Mr Cherney and himself, and possibly others, renting tuxedos in a shop near Picadilly Circus. There are transaction at Cecil Gee Stores in Sloane Street and Brompton Road on 11 and 12 October 1993 at {67A/8/408}
91 {118AB/115/8121} - {11AB/115/8144}

LME event.[92] Although Mr Cherney had pleaded that he met Mr Deripaska in October 1993 in Further Information served on 6 October 2010,[93] the car accident was not mentioned by Mr Deripaska until his supplemental evidence. Mr Deripaska accepts, however, that he did travel from Moscow to Sayagorsk for the shareholders' meeting on 22 October 1993. In these circumstances, it is not clear on what basis it is suggested that any accident would have prevented the considerably less arduous trip from Moscow to London less than two weeks before.

39. Mr Deripaska says he met Mr Cherney for the first time in May 1994 at a dinner attended by TWG, to which he was invited by Mr Yafyasov and Mr Generalov while he was attending an English language course in Bournemouth.[94] Mr Cherney accepts that there was such a meeting, but denies it was the first meeting.[95]

40. The available contemporaneous evidence shows Mr Cherney's account to be much the more likely, and this issue will have to be explored in evidence with Mr Deripaska.

The terms of Mr Cherney's partnership with Mr Deripaska

41. Mr Cherney says that he and Mr Deripaska reached the following agreement in London:

    1) He and Mr Deripaska would become 50:50 partners in a joint aluminium business.

    2) Mr Deripaska would contribute his existing aluminium assets (which were worth about US$3 to US$5 million) to this joint business, which would be taken into account in any future division or profits.

    3) Mr Cherney would provide or organise finance where necessary.

    4) Mr Deripaska agreed that he would not have any other business interests in competition with Mr Cherney.

    5) Mr Cherney's 25% interest with TWG, his business with Mr Makhmudov and his other business interests, would not form part of the partnership.

42. At subsequent meetings, further details of the arrangement were worked out: Mr Deripaska was to contribute the Cypriot and Russian companies that he had established, which would become jointly owned companies, and Liechtenstein and Switzerland (the homes of Mr Cherney's existing business structures) would be the main bases for the joint business.

92 Deripaska4, para 24 {8F/64/1614}
93 See Mr Cherney's Reponses to Requests 3.1-3.5: {2/7/133}
94 Deripaska3, paras 143-146 {8B/27/595} - {8B/27/596}
95 Cherney6, para 133 {7A/6/251}

43. Mr Deripaska has advanced a number of attacks on this account, which include a suggestion that it is ridiculous that he would agree to give up half of his existing assets to someone he did not know, and that if there had been any such arrangement it would have been drawn up by lawyers and recorded in a formal document.

44. So far as the first criticism is concerned, Mr Deripaska was not giving anything up: his assets (such as they were) were being contributed to a partnership in which he was a partner, and for which he would receive credit in the final accounts. In return he was getting the financial support and business contacts of someone who was much more influential, wealthier, and better connected than he was, and who was capable of moving him into a completely different league in terms of business operation (as in due course happened).

45. So far as the second is concerned, the Court will see that there were numerous high-value partnerships or arrangements which were never documented. Mr Cherney's relationship with both Mr Mahkmudov and his 25% share in the business with TWG were not recorded in a written contract. Mr Deripaska himself claims to have reached a share-buying and participation arrangement with TWG in June 1994 which was never documented. He also claims that his shares in various of his businesses were held on his behalf by various individuals (e.g. Witness B) which arrangements were also never documented. There was nothing surprising about such relationships in Russian business circles at this time, and there is nothing in the point that Mr Deripaska now seeks to make.

C. EVENTS IN 1994

46. This is an important period in Mr Cherney's relationship with Mr Deripaska. It is not alleged that there was any relationship of *krysha* between them (surprising as it may seem, the date at which the *krysha* is alleged to have begun has varied – however, even now there is no suggestion that it existed in 1994). On Mr Deripaska's account, he had only limited dealings with Mr Cherney, and no business relationship. During this period, it is common ground that:

    1) Up to the general meeting on 15 November 1994, entities controlled by Mr Deripaska (Mr Cherney says entities held under the terms of his partnership) acquired additional shares in Saaz.[96]

    2) By June 1994, an unwritten agreement had been reached with TWG for the joint acquisition of shares in Saaz. The dispute between the parties is that while Mr Cherney says that the agreement was reached between the TWG group (in which he had a 25% interest) on the one hand, and the Cherney-Deripaska partnership on the other, Mr Deripaska suggests that Mr Cherney had no involvement in the transaction (certainly on his side).[97]

    3) On 15 November 1994, Mr Deripaska was elected general director of Saaz.

    4) In December 1994, the company Neoton Management ("Neoton") was formed in Cyprus. Significantly, the founding directors of this company were Mr Cherney, Mr Mahkmudov, and Mr Deripaska.

Acquisition of shares by entities controlled by Mr Deripaska

47. In a table at paragraph 8.3 of his first report Mr Haberman of Ernst & Young has helpfully summarised what the information in disclosure reveals about the acquisition by Mr Deripaska's entities of shares in Saaz, the cost of acquisition, and the source of funds.[98] In the course of 1993, Mr Deripaska acquired 522,552 shares at a cost of US$900,000. By the end of 1994, he had acquired a total of 880,284 (a further 357,732) shares at a cost of a further US$2.7 million, or US$3.6 million in total (he had held a higher figure of in excess of 1 million shares as at 15 November 1994, but some of those shares were sold thereafter – presumably as part of the share equalisation agreement with TWG).

48. As set out in Annex 2 to these submissions, Mr Haberman has also sought to identify the source of funds. It will be apparent from the table in Annex 2 that the finance required to acquire these shares

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96 Deripaska3, paras 97-105 describe his acquisition of shares to December 1993 {8B/27/581} - {8B/27/583}

97 Deripaska3, paras 152-169 give his account of the joint share-buying operation with TWG {8B/27/598} - 8B/27/602}

98 {17/2/64}

was limited, and that the surviving records do not allow the ultimate source of funds to be identified. The following points should be noted, however:

1) The amounts required to purchase those shares which had been purchased by the end of 1994 are relatively small – US$3.6 million in total.

2) A CV produced by Mr Deripaska and disclosed by him says that during the period 1992-1998, Mr Cherney acquired a significant shareholding in Saaz (although it suggests it was not held through Mr Deripaska's company Aluminproduct).[99]

3) There is a loan agreement of 1 June 1994 between United Overseas Bank Limited (signed by Simon Reuben) and Alpro Aluminium.[100] It would appear to be the evidence of Mr Karklin[101] that this was one of the ways by which Mr Deripaska received money from TWG to buy shares in Saaz. The treatment of that "*loan*" by Alpro Aluminium is instructive. Under the heading "*loan from United Overseas Bank*" the ledger of Alpro Aluminium lists a credit of US$1,360,000 as coming from Trans CIS Commodities on 1 July 1994 and the repayment of US$360,000 to Blonde under the heading "*loan from United Overseas Bank*".[102] The US$360,000 repayment is requested by Blonde from Alpro SA.[103] It is described as "*repayment of a loan*" in the schedule prepared by Mr Kessler in 1994.[104] In referring to this loan, a Syndikus note says "*Alpro 13.7.94 + 1 million belongs to us*".[105]

4) On 13 September 1994, Blonde made a payment of US$1,343,076 which appears under the heading "*invest stocks. Neoton management*" and the reference says "*AO Caaz*".[106] Neoton is referred to below.

5) In late 1994, Mr Cherney's company Blonde made significant transfers to Russkiy Capital: US$1,600,000 on 31 October 1994; US$250,000 on 18 November 1994 and US$300,000 on 30 November 1994. There is no documentary evidence as to the particular purposes for which these payments were made, but Mr Cherney says that this would only have been done at Mr Deripaska's request.[107] It seems clear that Russkiy Capital funded the acquisition of shares for Mr Deripaska's account as well as for its own account.

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99 {151/1/166} - {151/1/168}

100 {46/7/30} United Overseas Bank Limited is to be distinguished from the Swiss bank of similar name (referred to herein as "UOB").

101 Karklin1, para 51 {8A/23/411}

102 {53B/5/612}

103 Referred to in a letter of 11 July 1994 at {67C/15/941A}

104 {67C/15/1032}

105 {53K/12/3502}

106 {67/7/193}

107 Cherney8, para 33 {7C/8/624}

The joint share-buying agreement with TWG

49. As noted, Mr Cherney and Mr Deripaska are in agreement that by mid-June 1994, an unwritten agreement had been reached with TWG for the joint acquisition of shares in Saaz. The dispute between the parties is that while Mr Cherney says that the agreement was reached between the TWG group (in which he had a 25% interest) on the one hand, and the Cherney-Deripaska partnership on the other, Mr Deripaska suggests that Mr Cherney had no involvement in the transaction (certainly on his side):[108]

> "*Michael Cherney had no involvement of any kind in my relationship with TWG beyond the fact that he attended the dinner at the Sheraton and then subsequently put me on the phone with Lev Chernoy when I was in New York*".

50. When interviewed by the Swiss magistrate in the criminal proceedings initiated by TWG against Mr Cherney, Mr Deripaska and others on 17 February 2005 (at a time when he would have had no incentive to claim any closer dealings with Mr Cherney than was in fact the case), Mr Deripaska stated:[109]

> "*TWG Trans World Group did indeed wish to increase its participation, the number of shares it held in the factory, and I assisted it in doing so. However, this assistance was never formally set down in writing … I remember that I did have discussions on this subject with Mr Michael Cherney, who was acting on behalf of TWG Trans World Group*".

51. Mr Cherney says: that by the middle of 1994, he and Mr Deripaska had decided to work in conjunction with TWG in relation to the acquisition of shares in Saaz; that he put the proposal to Mr Lev Cherney in the middle of 1994 who agreed to a 50:50 split in principle; that despite this Mr Deripaska then reported that TWG would only support one third for Mr Cherney and Mr Deripaska; and that he (Mr Cherney) stepped in and managed to secure a 50:50 deal.[110] In his supplemental statement, Mr Deripaska refers to and relies upon evidence served by Mr Lev Cherney in the litigation in Dublin between TWG and Mr Deripaska. In his account of the share-buying agreement, Mr Lev Cherney states that there was initially a 66:33 split, but that he agreed to a 50:50 split after Mr Michael Cherney told him that one third of Mr Deripaska's interest in Saaz was held for Mr Michael Cherney.[111] Mr Michael Cherney does not accept all of the detail of this account – his agreement with Mr Deripaska was for a 50:50 split – but it is noteworthy that (a) even in June 1994, before any alleged *krysha* had begun, Mr Michael Cherney was referring to a share interest in Saaz with Mr Deripaska and (b) the 50:50 terms of the share-buying arrangement were attributed by Mr Lev Cherney to the intervention of Mr Michael Cherney.

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108 Deripaska3, para 169 {8B/27/602}
109 {31B/77/786}
110 Cherney 6, paras 144-147 {7A/6/255} - {7A/6/257}
111 {36G/68/1852} - {36G/68/1866}

Mr Deripaska's election as director general of Saaz

52. It is common ground that Mr Deripaska was elected as director general of Saaz at its meeting on 15 November 1994,[112] and that this gave him a position of great influence in the plant. Mr Deripaska says that he achieved this position unaided by Mr Cherney. He said that, having initially decided that he and TWG would support Mr Tokarev, he formed the view that Mr Tokarev would be an unsatisfactory candidate because of rumoured connections with local criminal gangs, and therefore he decided to stand himself. Mr Deripaska says that he told Mr Lev Cherney about his decision to stand for election a few days before, and that it was agreed that TWG would support Mr Deripaska for general director if he would support their candidate, Mr Lisin, for Chairman of the Board.[113]

53. It is Mr Cherney's evidence that Mr Deripaska raised the issue of standing as general director with him on a visit to Paris in 1994 (after they had previously agreed to support Mr Tokarev)[114] and that he persuaded TWG (despite initial opposition) to support Mr Deripaska's candidacy.[115] He also persuaded Salomon Brothers (who held a significant shareholding) not to attend the meeting. Mr Cherney accepts that he had misremembered the position when suggesting in his witness statement served at the jurisdiction stage that he had persuaded the Ministry of Metallurgy to vote for Mr Deripaska.[116] He did persuade Mr Generalov and Mr Yafyasov not to oppose Mr Deripaska (if the state shareholder had indicated such opposition it would have been influential). Mr Cherney's close ties to Mr Generalov and Mr Yafyasov have already been mentioned – both visited Florida at Mr Cherney's expense earlier in 1994.

Neoton Management

54. Neoton was incorporated in Cyprus – where Mr Deripaska had established Alpro Aluminium – on 15 December 1994.[117] Mr Cherney, Mr Deripaska, Mr Makhmudov, and Mr Joseph Karam were directors from 15 December 1994.[118] The general rule was that the approval of any two directors of Neoton was necessary to bind the company, but there was an exception for Mr Cherney, who could bind the company on its own.[119] These inconvenient facts are not easy to incorporate into Mr Deripaska's case that he had no business relationship or partnership with Mr Cherney (only a *krysha* relationship from May 1995 onwards), and that in his dealings with Mr Makhmudov he did not know where Mr Makhmudov obtained his funds from. As will be explored in evidence at trial, there cannot sensibly be any challenge to Mr Deripaska's involvement in Neoton or to the fact that

112 The report of the meeting of shareholders is at {38/1/177}
113 Deripaska3, paras 204-213 {8B/27/613} - {8B/27/617}
114 It is noticeable that Mr Cherney and Mr Deripaska in their exchanged witness statements given similar accounts of an original decision to support Mr Tokarev, and as to the reasons why Mr Deripaska decided he should stand instead.
115 Cherney6, para 152 and Cherney8, paras 23 and 38-39 {7A/6/259} , {7C/8/619} , {7C/8/627} - {7C/8/629}
116 Cherney1, para.27 {7/1/11}
117 {107/2/6}
118 See the certificate from the Republic of Cyprus Ministry of Commerce at {107/4/31} See also {107/3/28}
119 {107/3/28}

Neoton engaged in significant commercial activity.

55. What is wholly unexplained is how in December 1994 Mr Deripaska became a director of a company with Mr Cherney, why he delegated control of the company to Mr Cherney, and why his internal documents acknowledge that he was a director of that company until 1997[120] if, as he now suggests, he knew nothing about it.[121] Given that, on Mr Deripaska's own case, the alleged *krysha* arrangement imposed by Mr Cherney did not commence until 1995, the incorporation of Neoton in December 1994 is extremely difficult for him to explain. As with other contemporaneous documents which undermine his case, Mr Deripaska resorts to disputing the authenticity of the management resolution.[122]

120 {46A/102/441}

121 Mr Deripaska's evidence on this point is unsatisfactory – see Deripaska3, paras 173 {8B/27/603} and 253{8B/27/630}

122 Deripaska3, para 253 {8B/27/630}

D. 1995-1997: TRADALCO AND TWG

56. In October 1995, Tradalco was formed as a joint venture company to undertake "tolling" of aluminium with the Saaz plant, effectively profiting from the processing by the Saaz plant of raw materials sourced on behalf of Tradalco and sold on its behalf by TWG. Tradalco was owned as to 50% by TWG and as to 50% by Bluzwed Metals,[123] a BVI company. Mr Cherney claims that the 50% held by Bluzwed Metals was part of his partnership with Mr Deripaska.

57. Mr Cherney's evidence is that about a year after the joint-share buying arrangement with TWG began, Mr Deripaska came up with the idea of forming a joint venture company with TWG through which profits from Saaz would be realised.[124] Mr Cherney says that he raised the issue with Lev Cherney, that TWG agreed, and that Tradalco was formed as the joint venture company, with Mr Cherney's company Bluzwed Metals representing himself and Mr Deripaska in the arrangement.[125] Mr Cherney also says that he had introduced Mr Deripaska to Mr Karam,[126] and that he persuaded TWG that Mr Karam should be one of the directors of Tradalco.

58. Mr Deripaska's evidence is that Mr Cherney had no involvement in the Tradalco venture. He says that a proposal was raised with him by Mr Lev Cherney in Zurich in late February 1995, where he was attending a meeting of the World Economic Forum,[127] who said if the deal was accepted "*he and Michael would be willing to use their own 'resources' to help to protect me, my business and the plant from the local criminal gangs) in Sayanogorsk*" which Mr Deripaska understood "*to be a reference to his criminal connections".*[128] He says that "*Michael Cherney did not take part in those negotiations*",[129] and there was no suggestion that he would have any interest in the profits. Mr Deripaska says that he instructed Mr Karklin to find "*a company which would not reveal my identity as the beneficiary*" and that Mr Karklin sourced Bluzwed Metals through Mr Karam, which he thought was:[130]

> "*... a new company or an existing dormant, so-called 'shelf' company that had never been used before. Only many years later did I learn that it was not so. I found out that the company had been set up by Michael Cherney's lawyers, although it was not involved in any activity at the time of purchase*".

[123] {128/1/2}
[124] Cherney6, para 239 {7A/6/296}
[125] Cherney6, para 240 {7A/6/297}
[126] Cherney6, para 164 {7A/6/263}
[127] Deripaska3, paras 231-232 {8B/27/623} - {8B/27/624} His passport does have a Swiss visa for 1 February to 1 March 1995 {20A/5/548}
[128] Deripaska3, para 232 {8B/27/624}
[129] Deripaska3, para 233 {8B/27/625}
[130] Deripaska3, para 239{8B/27/626}

The formation of Bluzwed Metals

59. Bluzwed Metals was formed on Mr Cherney's instructions on 20 July 1994 through Syndikus.[131] It opened a bank account with Credit Suisse in January 1995 and the beneficial owner was identified as Mr Cherney.[132] Syndikus' fees for running Bluzwed Metals were paid by Mr Cherney.[133] Bluzwed Metals also applied to open an account with United Overseas Bank ("UOB").[134] Once again Mr Cherney was identified as the beneficial owner,[135] and the account had the same signatories.[136] The account officer for that account was Mr Michael Coquoz.[137] By May 2000, Mr Cherney, Mr Makhmudov, and Mr Deripaska were identified by UOB as the beneficial owners.[138]

60. As part of its due diligence in relation to the proposed financing of Tradalco, in November 1995, Mr Coquoz and another UOB employee – Mr Hagman – visited Russia for a week where they met Mr Deripaska, Mr Alexander Bulygin, and Mr Karam. They visited the Saaz plant. The note of that visit is an important document which must be read in full.[139] It records Mr Cherney's interest in Saaz. It notes that management of the plant was in the hands of the Cherney group through Mr Deripaska. The note also records the decision to set up Tradalco in Dublin with capital of US$350,000, a shareholders' subordinated loan of US$4,500,000, and an unsubordinated loan of US$80 million. The note refers to 50% of Tradalco being held by Bluzwed Metals "*that in turn belongs to Michael Cherney (shareholder of our client Blonde), Oleg Deripaska (CEO of Sayanogorsk) Iskander Makhmudov (director of Blonde)*". Further, the note records that UOB had been asked to provide assistance with tolling on 30 to 45 day terms on the same lines as UOB did for Mr Cherney's company Blonde. Mr Deripaska accepts that he met individuals from UOB on this visit. He must also accept that UOB did indeed provide the same credit terms to Tradalco as it did to Blonde. He offers some unconvincing reasons as to why the note is not reliable.[140]

61. Mr Coquoz was interviewed by the Swiss magistrate about this visit in 2005 in the context of the criminal investigation that was instigated by TWG. Mr Coquoz recounted meeting Mr Deripaska and Mr Bulygin at the plant and in Moscow. He said he had also met with Mr Cherney on several occasions and Mr Makhmudov. He stated that Mr Cherney was the beneficial owner of Bluzwed Metals with Mr Deripaska and Mr Makhmudov, and when asked if Mr Cherney was familiar with

131 {69/1/1}
132 {69A/12/451} The signatories were Mr Cherney, Mr Makhmudov and Mr Karam: see {69A/12/462}
133 The invoices are issued to Blonde on 25 August 1994 {67B/14/847} , 12 October 1994 {67B/14/856} , 17 February 1995 {67C/14/899} , 12 May 1995 {67C/14/923} , 7 November 1995 {67C/14/925} and 26 August 1996 {84B/8/787}
134 {69A/12/466}
135 {69A/12/474}
136 {69A/12/497}
137 {69A/12/491}
138 {69A/12/504}
139 {18A/1/9} - {18A/1/18}
140 Deripaska3, para 329 {8B/27/653} - {8B/27/654}

the affairs of Tradalco he replied:[141]

> "*Of course he was. He managed the group and I believe he was fully aware of what was going on*".

In the same interview, he made it clear that the established trading relationship with Blonde was a key factor in the decision to provide funding for this new aluminium business.

62. Another entity formed by Syndikus was Bluzwed Foundation ("Bluzwed Foundation"), formed in March 1996.[142] The original foundation documents identify the Hades Foundation – an entity owned solely by Mr Cherney – as the founder and the persons authorised to give instructions were Mr Cherney, Mr Makhmudov, and Mr Deripaska, and later Mr Cherney and Mr Makhmudov.[143] Bluzwed Foundation had a bank account with LGT Bank in Liechtenstein which identified Mr Cherney and Mr Makhmudov as the beneficial owners.[144]

63. Tradalco itself was established by Syndikus on the instructions of Mr Cherney's company, Furlan Anstalt.[145] In a telephone conversation of 17 October 1995, Mr Karam told Mr Domenjoz that going forward Bluzwed Metals would be owned 33% by Mr Cherney, 33% by Mr Makhmudov and 33% by Mr Deripaska, and that it would be acquiring 50% of a new Irish company which was being formed (i.e. Tradalco), with the other 50% being owned by Transworld.[146] Furlan Anstalt paid fees relating to Syndikus' administration of Tradalco.[147]

64. Bluzwed Metals was used to establish a company – Steeltex S.A. which later changed its name to Liberty Metals Group S.A. – in which Mr Cherney engaged in a steel business with Mr Gene Kharlip, in which Mr Deripaska was not involved (although his companies did provide some services to and have dealings with Liberty Metals).[148] It owned shares in that company.[149] If Mr Cherney had understood Bluzwed Metals to be Mr Deripaska's entity, it is inconceivable that it would have been used to establish the Liberty Metals company.

65. Against this background, the suggestion that Mr Deripaska believed he acquired Bluzwed Metals "*off the shelf*" without knowing it was Mr Cherney's company until "*many years later*" is absurd. Mr Cherney's involvement in Bluzwed Metals, Bluzwed Foundation, Sayana Foil and Tradalco reflects the fact that Mr Cherney and Mr Deripaska were participating in the Tradalco venture with TWG as partners, as UOB and Mr Karam were informed in 1995.

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141 {31B/72/702}
142 {68/1/2}
143 {68/1/14}
144 {68/5/65}
145 {128/1/1}
146 {18A/1/7} - {18A/1/8}
147 E.g. payments of 24 November 1995 {84B/8/738}
148 {100/1/2}
149 {100/5/91} It had been replaced by another shareholder by July 1996: {100/5/98} - {100/5/99}

The involvement of CCT, Bluzwed Foundation and the Meganetty Foundation in profits made by Bluzwed Metals

66. Between April and October 1996, and again in March 1997, TWG made payments in respect of Bluzwed Metals to Mr Cherney's company CCT Consul Consult & Trade Establishment ("CCT"), from which sums were then moved out to Bluzwed Foundation, the Meganetty Foundation, and other destinations. These payments were made on the instructions of Mr Deripaska, who was managing CCT's bank accounts at this time. Mr Cherney relies upon these affairs as evidence of his interest in Bluzwed Metals and its aluminium business, and of his true relationship with Mr Deripaska – a business partnership for which Mr Deripaska managed a number of assets.

67. It might have been thought that Mr Deripaska would allege that these payments were made to CCT as *dolya* payments. However these payments have never been pleaded as *dolya*. Until service of supplemental statements on 5 April 2012, the position in relation to CCT was as follows:

    1) Mr Deripaska had pleaded a 1999 payment to CCT as a *dolya* payment.[150]

    2) Mr Cherney had pleaded payments made by CCT in 1997 and 1998 as contributions to his partnership with Mr Deripaska.[151]

    3) Mr Deripaska had pleaded in response that "*no admission are made as to the ownership or control of CCT at the material time*".[152]

68. In his Third Witness Statement, Mr Deripaska offered no alternative account of CCT's involvement. In relation to Bluzwed Metals, he stated that "*although Michael Cherney's lawyers has some token involvement in setting up Bluzwed, he cannot seriously allege now that Bluzwed was conducting business on his behalf and that he was entitled to any part of Tradalco profit it earned*".[153] In another part of his statement, he explained that:[154]

> "*I had no plans to give Michael Cherney any rights with respect to Bluzwed or any entitlement to a share in the profits coming out of Tradalco, which he might be able to claim if he had such rights with respect to Bluzwed*".

69. This would have been an obvious context in which to suggest that Mr Cherney had sought to create the appearance of having an interest in the profits of Bluzwed Metals by insisting that those profits (or some of them) be paid to CCT. But there was no such suggestion.[155]

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150 {2/8/209}
151 {2/11/235}
152 {2A/13/407}
153 Deripaska3, para 240 {8B/27/626} - {8B/27/627}
154 Deripaska3, para 332 {8B/27/654}
155 See also Deripaska3, para 337.1 {8B/27/656}

70. In his supplemental evidence, Mr Deripaska has sought to address both the involvement of CCT in receiving profits from Bluzwed Metals' involvement with TWG, and his own role in managing CCT's bank accounts. Mr Deripaska suggests that as part of the *krysha* he was required to use CCT bank accounts "*for running some of treasury functions of my aluminium companies through these accounts*" (sic) so as to give CCT the appearance of a legitimate business. He says that for this purpose he was authorised by Mr Cherney to give instructions to Syndikus relating to these accounts.[156] This issue will have to be explored in evidence.

The failure to challenge Mr Cherney's involvement in Bluzwed Metals

71. There is another episode relating to Bluzwed Metals which will feature in the evidence. In February 1997, when he was seeking to make a payment to an entity called Kingland Enterprises Limited – which Mr Deripaska alleges was a *dolya* payment to Mr Cherney – Syndikus informed Mr Deripaska that according to their records Mr Cherney's consent was necessary for payments from Bluzwed Metals.[157] Such authority was given, and the payment made.[158] For someone who claims only to have learned of Mr Cherney's involvement in Bluzwed Metals in 2005, this would have come as something of a shock.[159] However, it elicited no response or action on Mr Deripaska's part – not to Syndikus (who he claims to have understood to be fiduciaries loyally looking after his interests) nor to Mr Karam. Mr Deripaska's explanation is that that "*the misunderstanding was resolved and I did not want have to a confrontation with Syndikus or Mr Cherney over this*".[160]

72. When interviewed by the Swiss magistrate on 17 February 2005, Mr Deripaska was asked why Mr Cherney was shown as the ultimate beneficial owner of Bluzwed Metals on its bank accounts. He stated "*I have no comment to make on this matter. You ask me if incorrect information was given to the Bank. I reply that I have no opinion on this subject*".[161] When asked if Mr Cherney had ever had an interest in Bluzwed Metals, he replied: "*On the advice of my counsel I have to say I do not know. I have always believed that I was the sole owner of Bluzwed*".

73. Mr Deripaska's alleged ignorance of Mr Cherney's interest in Bluzwed Metals is further undermined by Mr Deripaska's knowledge of, and involvement in, the report that was prepared by the Cypriot accountant, Mr George Philippides, in late 2001. As the introduction to that report makes clear: "*[the] report is broken down into a number of sections dealing with [Mr Cherney's] main business activities covering the period 1988-2001…*". Paragraph 4.1 of the report was devoted to Bluzwed Metals as one of Mr Cherney's business interests and it was referred to at paragraph 5.2 in the context of loans and investments made by Mr Cherney into the aluminium business.

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156 Deripaska4, paras 104-109, 495 and 501 {8F/64/1641} - {8F/64/1642} ; {8F/64/1737} ; {8F/64/1739}
157 See exchange of 4 February 1997 {48A/1/273}
158 {18A/1/19}
159 See Deripaska3, para 348 {8B/27/659}
160 {8B/27/655}
161 {31B/77/781}

74. Mr Deripaska instructed his own staff (including Witness B and Mr Mishakov) to assist Mr Cherney in the preparation of the Philippides report.[162] That assistance included providing Mr Philippides with information in relation to Bluzwed Metals which, as Mr Deripaska well knew, would be relied upon in the report as evidencing the source of Mr Cherney's wealth.[163] The basis on which Mr Deripaska and his employees considered it appropriate actively to assist in the preparation of a document which described one of Mr Deripaska's entities (on Mr Deripaska's case) as belonging to Mr Cherney some 8 months after the termination of the alleged *krysha* arrangement will be explored at trial. For present purposes, the Court is asked simply to note that Mr Deripaska not only knew that the Philippides report represented Bluzwed Metals as an entity in which Mr Cherney had an interest, but that he actively assisted in promoting that representation.

Mr Cherney ceases to be a partner in TWG

75. In 1997, Mr Cherney's involvement as one of the partners in the TWG business ended. The fact that his involvement in TWG terminated is not disputed, but the nature of the relationship and what the ending of the relationship involved are very much in dispute. Mr Cherney's evidence is that his partnership with Mr Deripaska had made it difficult for him to continue as a partner with TWG, in particular after he took the side of Mr Deripaska and TWG's Russian managers at a meeting in Geneva in late 1996, leading to a suggestion from the Reuben brothers that he should leave the partnership.[164]

76. Whilst documents prepared internally by Mr Deripaska's company suggest that Mr Cherney split with TWG over a dispute over strategy in Russia,[165] Mr Deripaska now claims in this litigation that TWG were subject to a "*krysha*" regime by Mr Cherney and they made a final pay-off to Mr Cherney of US$410 million to terminate that relationship with Mr Cherney. The suggestion that Mr Cherney subjected TWG to a *krysha* is now a key aspect of Mr Deripaska's story: it features (a) in his account of the start of the *krysha*, with Mr Cherney and Mr Malevsky apparently having said that they were receiving US$30 to US$40 million a year in *dolya* from TWG and wanted Mr Deripaska to pay his share,[166] and (b) in his account of the 2001 Agreement, with Mr Deripaska suggesting that he was told by Mr Malevsky that TWG had paid US$410 million to end their *krysha* and that he would have to pay a similar amount.[167]

77. However, a somewhat different position was taken in Mr Deripaska's jurisdiction statement: there he stated that "*[TWG] was an entity owned and controlled by David and Simon Reuben, and by Lev*

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162 First witness statement of Witness B, para 86 {8D/32/1055} and Mishakov1, para 104 {8A/20/375}

163 Witness B wrote to Syndikus on 5 November 2001 in order to request documents relating to Bluzwed Metals Ltd which were then provided to HPP: {48M/1/3493}

164 Cherney6, paras.95 and 245-249 {7A/6/298} - {7A/6/300}

165 {135A/1/333}

166 Deripaska3, para 296 {8B/27/644}

167 Deripaska3, para 470 {8B/27/690}

Cherney and his brother Michael Cherney (as Mr Cherney himself acknowledges)".[168] Of course, Mr Deripaska could not have said this if his position was that Mr Cherney was not a partner of, but was imposing a *krysha* upon, TWG.

78. In his Further Information dated 16 August 2010, Mr Deripaska stated in response to the request for clarification as to when and where it was alleged he first met Mr Cherney that: "*The reference in paragraph 2.1.1 is to a dinner event that took place in May 1994 in London, which event Mr Deripaska understood Mr Cherney to have been attending as a partner in Trans World Group...*" (emphasis added).[169]

79. In Further Information served on 5 August 2011, signed by Mr Deripaska, he stated:[170]

> "*Mr Cherney's own case in this action has been that, apart from this alleged partnership with Mr Deripaska, he also had other partnerships with others; including Mr Makhmudov and TWG. Mr Deripaska is not in a position to admit or deny that, and cannot state with precision the circumstances or terms of any such partnership*".

80. Had Mr Deripaska been told that Mr Cherney had imposed a *krysha* upon TWG, as he now claims, no such responses would have been given. No attempt has been made to identify the *dolya* of US$30-40 million a year. On the contrary, Mr Deripaska's solicitors have pointed to an absence of any significant payments from TWG to Mr Cherney between 1993 and 1996.[171]

81. The allegations that the Reuben brothers paid an OCG for protection, and that their senior employee (who still holds a senior position in their business), Mr Alexander Bushaev, was affiliated to an OCG,[172] are, of course, extremely serious allegations. Despite the late and unsatisfactory nature of his change of case on this issue – from a positive averment that Mr Cherney was one of the owners and controllers of TWG, to a position that Mr Deripaska did not know the nature of Mr Cherney's relationship with TWG, to a positive allegation that it was a relationship of *krysha* – Mr Deripaska has not adduced any evidence from the Reubens. They, for their part, have made numerous statements to the effect that they were never involved in any criminal behaviour in Russia.[173] Mr Cherney has adduced these statements under Civil Evidence Act notices.

82. Turning to the US$410 million, this was paid by reference to two agreements: one signed by Mr Cherney, his brother Mr Lev Cherney and the Reuben Brothers which provided for a payment of US$300 million; and another agreement, drafted so as to suggest that payment was being made for

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168 Deripaska1, para. 15. {8/2/8}
169 {2/6/89}
170 Para 4(b) {2A/13/378}
171 Prevezer3, para 417 {151C/1/929}
172 {2/4/44J}
173 Reuters 7 March 2006: "*We are extremely legal and extremely above board*" {9/11/184} ; Financial Times 11 April 2000: "*There is absolutely no truth to any of the allegations that Trans-World has been involved in any illegal activity in Russia*" {9/11/185} ; and Wall Street Journal 28 January 1997 denying "*all suggestions of wrongdoing and says the company is simply a target of jealous competitors*": {9/11/185}

consultancy services, providing for the payment of the remaining US$110 million. There are a number of features of these documents which Mr Deripaska has criticised. The contracts were not drafted by Mr Cherney, for whom they served the intended purpose of ensuring he was paid the money he had agreed he would get for giving up his share in the TWG business. It is common ground that the sum of US$410 million was paid over a period of six months. It should be noted that Mr David Reuben, when interviewed by *Fortune* magazine, referred to having paid US$400 million to Mr Cherney when the latter's partnership with TWG was ended.[174]

83. Mr Deripaska gives evidence as to what he claims he was told by Mr Cherney, and what Mr David Reuben and Mr Karam allegedly told him about the nature and purpose of the agreement: that Mr Reuben told him Mr Cherney was to receive US$300 million, that Mr Karam told him the figure was US$410 million of which US$100 million was to be paid to Mr Malevsky, and that Mr Cherney and Mr Malevsky told him that he would have to make a similarly sized payment to the Reubens to the end the *krysha* relationship imposed on him. These matters will be explored in the course of Mr Deripaska's cross-examination.

The joint venture between Mr Cherney and Mr Deripaska, and TWG, begins to break up

84. The relationship between Mr Deripaska and Mr Cherney, and TWG, became increasingly tense. It is Mr Cherney's evidence that TWG sought to starve Saaz of alumina, and that he helped source alumina using his contacts with the Bratsk plant and the Pavlodar plant in Kazakhstan.[175] As part of this process, it is his evidence that he assisted in reaching agreements with Messrs Mashkevich, Shadiev, Ibragimov and Saidazimov, who were in control of the Pavlodar plant, and that pursuant to these agreements, he (Mr Cherney) acquired an interest in the Pavlodar plant.

85. Mr Deripaska had prepared for the break with TWG and the prospect of litigation by TWG – in a phrase drafted with some care, Mr Deripaska states "*we also developed and implemented a package of measures aimed at compensation of the profits lost by our group*".[176] One aspect of this was the setting up of a series of "shadow" companies – similarly named to those which were being used jointly with TWG but formed in different jurisdictions – which Mr Deripaska used to divert contracts and resources from TWG. It was these actions by Mr Deripaska which triggered the subsequent wide-ranging allegations of criminal conduct made by TWG against Mr Deripaska, Mr Cherney, Mr Karam and others in Switzerland.

86. On 24 September 1997, Witness L wrote to Mr Karam asking him to incorporate a new company described as the "*twin of previously organised Alucor Trading S.A.*":[177]

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174 {135/1/131}
175 Cherney6, paras 258-261 {7A/6/302} - {7A/6/303}
176 Deripaska3, para.308 {8B/27/647}
177 {48A/1/496}

> "*In case there will be difficulties with incorporation of second company with one and the same title – please change or add one letter in current title, let it be, for example, 'Alucar Trading S.A.' or 'Alucore Trading S.A.' – in any case it should look like misprint in our documents which are already presented to officials*".

87. When asked by the Swiss magistrate about this letter, Mr Deripaska decided to blame it on Mr Karklin:[178]

> "*I have no idea where this document comes from. Accordingly it is impossible for me to comment … It was the lawyers in the Moscow office who concerned themselves with such things, in particular Mr Karklin*".

88. On 30 September 1997, another of Mr Deripaska's close associates, Mr Bulygin, instructed Mr Karam to open two offshore companies: Sayana Foil Ltd described as the "*twin of Sayana Foil S.A.*" and another to be called something similar to Consultancy Finance Ltd. On 1 October 1997, Mr Karam replied: "*As already explained to OD by Joseph Karam we have no chance to get permission to create another company in the Commonwealth of Bahamas under a similar name like Alucor Trading SA, even not by changing letters as you are suggesting. But on the other hand we are happy to advise that a new company had been created in the name of Alucor Trading S.A. but incorporated in Tortola, British Virgin Islands"*.[179] This was obviously dishonest conduct. Its significance, however, is not merely in what it reveals about Mr Deripaska's character or *modus operandi*:

    1) Mr Karam was prepared to go a considerable distance in loyally serving Mr Deripaska in his dispute with TWG. Against that background, the suggestion (now made by Mr Deripaska) that the numerous contemporaneous statements, memoranda, and letters which he wrote which support Mr Cherney's case and undermine Mr Deripaska's reflect his disloyal and dishonest preferment of Mr Cherney's interests over those of Mr Deripaska is shown to be distinctly unreal.

    2) The documents relating to the incorporation of "shadow" companies continued to reflect Mr Cherney's involvement. Mr Cherney had been identified by Syndikus as one of the persons authorised to give instructions for Sayana Foil SA (BVI). Documents for Sibirskiy Aluminium Foil, incorporated on 13 February 1998, identified Mr Cherney and Mr Deripaska as persons interested[180] and Mr Cherney, Mr Deripaska, Mr Makhmudov, Mr Popov, and Mr Malevsky were identified as the beneficial owners of the company with LGT Bank.[181] The incorporation form for Alucor Trading, of 26 August 1997, identified Mr Cherney, Mr Makhmudov, Mr Deripaska, Witness B, and Mr Mishakov as persons authorised to give instructions.[182] Metcare Management SA was incorporated on 11 March 1998. The customer

178 {31B/77/810} - {31B/77/811}
179 {128/11/165A}
180 {124/1/6A}
181 {124/9/134A}
182 {58A/13/300A}

profile identified Mr Cherney and Mr Deripaska as the beneficial owners,[183] as did LGT Bank.[184] Mr Deripaska explains that as part of the measures to "protect" himself from TWG, he replaced Tradalco with Alucor Trading SA (BVI) as the entity which entered into tolling contracts with Saaz.[185] The Syndikus papers identify Mr Cherney, Mr Deripaska, Mr Makhmudov, and Mr Karam as persons authorised to give instructions.[186]

89. In addition, in anticipation of litigation by TWG, Mr Deripaska arranged for Bluzwed Metals to be transferred to a new foundation.[187] On 10 November 1997, Mr, Deripaska informed Mr Karam: [188]

> "*As Tradalco belongs to two shareholders and all business of company is transferred now to Alucor Trading SA could TWM SA have juridically grounded claim on new company. Could the matter be solved if we sell all shares of Alucor Trading SA which belongs to Bluzwed Metals to Bluzwed Foundation*?"

90. As noted above, Bluzwed Foundation was an entity which was established by Mr Cherney, Mr Mahkmudov, and Mr Deripaska in March 1996, and into which Mr Deripaska transferred a number of payments from CCT. On Mr Deripaska's case, therefore, in 1997 when he still believed Mr Cherney had no interest in Bluzwed Metals and did not want to give him any grounds to advance such a claim, he suggested that Bluzwed Metals be transferred to a foundation, Bluzwed Foundation, in which he knew Mr Cherney to have an interest.

91. In the event, Bluzwed Metals was not transferred to Bluzwed Foundation. A Syndikus file note of 9 April 1998 records Mr Karklin instructing Syndikus to sell Bluzwed Metals for US$1, under a contract to be back-dated to before 31 December 1997.[189] An existing foundation on Syndikus' books – Fundacion Moris – was chosen. The note records that "*under the circumstances in 1998 Bluzwed Metals Ltd can not belong to the group of IM/OD/MC*".

Litigation with TWG

92. In early 1998 Mr Deripaska arranged for a letter to be sent to the Reubens purporting to terminate the joint venture.[190] This marked the outbreak of extensive litigation – in Ireland, in the BVI and (both criminal and civil litigation) in Switzerland. In the course of that litigation, a number of the protagonists in this litigation – Mr Cherney, Mr Deripaska, Mr Karam, the Reuben brothers, and others – were either interviewed or gave evidence, either directly or through their solicitors. These affidavits and interviews will feature in the course of the evidence.

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183 {105/1/5A}
184 {105A/10/323A}
185 Deripaska3, para 49 {8B/27/568}
186 {58/1/2}
187 Deripaska3, para 348 {8B/27/659}
188 See also the similar suggestion in a fax from Witness L to Mr Niggli of 19 November 1997 *"from point of view of divorce with our partners"* {48B/1/620A}
189 {48C/1/1022A}
190 Letter of 15 January 1998 {48B/1/778}

93. There are a number of interesting aspects of these disputes.

1) TWG brought criminal proceedings against Mr Cherney, Mr Deripaska and others in Switzerland. The allegations against Mr Cherney, and the related allegations against Mr Deripaska, included allegations that they were members of OCGs. However, it is striking that when Mr Simon Reuben was interviewed by the magistrate in Geneva, he suggested that he had only learned of the alleged links between Mr Cherney and criminal organisations when preparing for the Swiss proceedings against Mr Deripaska. He stated he did not know what criminal organisation Mr Cherney was a member of and suggested that the magistrate should ask his lawyers. If TWG had been subject to a *krysha* as Mr Deripaska alleges, then in proceedings in which they were accusing Mr Cherney and Mr Deripaska of criminality and association with OCGs, it is inconceivable that this would not have been mentioned.[191]

2) TWG were clearly aware that Mr Deripaska was not the only owner of Bluzwed Metals. On 9 February 1998, responding to the letter purporting to terminate the Tradalco joint venture, TWG wrote stating:[192]

> "*As you are aware we know all the individuals who are effectively party to the JV arrangements and who stand behind and are part of and control Bluzwed Metals Limited and Bluzwed Foundation. In the circumstances please let me know who at Bluzwed has made this decision*".

The letter went on to suggest a meeting which:

> "*… must be held with all the effective joint venture parties, i.e. those controlling and instructing Bluzwed Metals Limited and Bluzwed Foundation; please confirm that they will all be present … The individuals behind your client will be held personally responsible and liable and will be involved in these claims*".

3) Mr Karam was interviewed on a number of occasions. On 17 June 2001, he gave evidence that Mr Cherney held a share in Saaz, together with Mr Deripaska and Mr Makhmudov, and he described the dispute as one between Transworld and Cherney-Deripaska.[193] On 6 December 2004, he told the magistrate that Mr Cherney was the ultimate beneficial owner of Bluzwed Metals, that he shared the profits of that company with Mr Deripaska and Mr Makhmudov, and that two years ago, Mr Deripaska had bought out the interests of Mr Cherney and Mr Makhmudov.[194]

4) The dispute between TWG and Bluzwed was settled in June 2005. The settlement documents contained various "carve outs" to provide for Mr Cherney.[195]

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191 {31B/76/766}
192 {41/1/138}
193 {31A/16/488}
194 {31B/72/706} - {31B/72/711}
195 {151/1/169} - {151A/1/306}

E. MR CHERNEY'S CONTRIBUTION TO THE PARTNERSHIP

94. Mr Deripaska has alleged that Mr Cherney did not make any contribution (financial or otherwise) to his business, which allegations are said to support Mr Deripaska's case that their relationship was not a relationship of partnership but one of *krysha*.

95. The reality is very different. When Mr Cherney met Mr Deripaska, the former was a figure of substantial wealth and connections in the metals business. The comparative positions of Mr Cherney and Mr Deripaska in 1993 and 1994 have been described above. This section addresses Mr Cherney's contribution to the joint aluminium business both in terms of his financial contributions and the contribution of his contacts, status and experience.

Mr Cherney's contacts

96. Mr Cherney's contacts in both business and government circles have been introduced already in Section B above,[196] and are addressed more fully in his witness evidence (and will doubtless be examined further in cross-examination, given Mr Deripaska's challenge to Mr Cherney's evidence). As such, they are not repeated here, save to stress that the value of such contacts cannot be understated. One point, however, does bear some repetition and further focus, namely his role as a partner in TWG (in which business his brother Mr Lev Cherney was also a significant stakeholder). There is no dispute that Mr Cherney's relationship with TWG began before Mr Deripaska had any relationship with TWG, and that the TWG connection proved instrumental in Mr Deripaska's acquisition of control over Saaz and the development of the aluminium business. TWG provided important financial support for the acquisition of shares in Saaz and raw materials for the operation of the plant.[197] Mr Deripaska seeks to suggest that Mr Cherney played little or no part in this process, effectively painting him as a marginal figure. Mr Cherney's evidence is that he played a key role in securing TWG support (something he was well placed to do). For present purposes, it is to be noted that on both Mr Cherney's and Mr Deripaska's accounts, the share buying scheme with TWG occurs after Mr Cherney and Mr Deripaska have met when Mr Deripaska approached him to become his partner have been referred to in Section B of these opening submissions.

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196 The Court will in due course have to consider the contrast between what Mr Deripaska has been at pains to paint as the broken down and corrupt state of the Russian law and order infrastructure during the 1990s, with the apparently unimpeachable nature of economic administration, whereby no influence was needed to assist in the acquisition of shares in privatised industries, the obtaining of tolling quotas or export licences.

197 Cherney6, para.225 {7A/6/291}

Mr Cherney's financial contribution

The January Further Information

97. The January Further Information was served in response to a request that Mr Cherney identify, *inter alia*, "*any and all financing he alleges that he supplied and/or arranged for the acquisition of interests in Saaz and/or any other interest in the alleged partnership*".[198] In his response, Mr Cherney identified various difficulties he faced in providing that information, including the absence of documents and the fact that:[199]

> "*… the Claimant is unable to precisely identify when or from which particular entities funds were obtained, each occasion on which funds were advanced or the amounts advanced on each occasion: the Claimant was not closely concerned with this detail at the time, and to the extent he was aware of any of these matters, he can no longer recall the position now*".

98. However, Mr Cherney's legal team were able to identify a huge number of payments from entities controlled by Mr Cherney to entities controlled by Mr Deripaska from the documents then available to them and these were set out. Following the analysis of Mr Deripaska's disclosure, it became apparent that a significant number of those payments were made in the context of Mr Deripaska's involvement with Mr Cherney's copper business with Mr Makhmudov, while for a number of other payments it has not been possible to identify the specific purpose to which they were put, beyond the fact that they were paid to an entity controlled and staffed by Mr Deripaska. Mr Deripaska's legal team has sought to make much of these facts in the context of the application to amend the January Further Information, suggesting that the resultant changes reveal a major flaw in Mr Cherney's case. For present purposes, Mr Cherney simply observes:

1) That it was always made clear that the January Further Information was based on documentary reconstruction from incomplete documents. The forensic accountancy exercise has confirmed that the overwhelming majority of the pleaded payments took place from entities which, with the exception of Bluzwed Metals, are agreed to be entities associated with Mr Cherney, to entities which were established and controlled by Mr Deripaska (albeit it is suggested that for some entities this ceased to be the case at some point in time).

2) The forensic accountancy exercise has identified a substantial number of payments of significant value which either were or may have been used for the purposes of the aluminium business.

3) Even in respect of those payments which it can now be seen were not used for the purposes of the aluminium business, the existence of those payments between entities controlled by Mr Cherney and entities controlled by Mr Deripaska itself provides powerful evidence which

198 Request 1 {2/11/219}
199 Response 1(4) {2/11/220}

contradicts Mr Deripaska's assertion that he had no business dealings with Mr Cherney, and that his relationship with Mr Cherney was solely one of *krysha* between the representative of an OCG and his victim.

Payments which were made for the aluminium business

The position in 1994

99. Documents relating to the parties' financial affairs in the early period in issue in this case, and in particular in 1994, are limited. This is as much the case when it comes to identifying the source of funds used by Mr Deripaska to purchase shares in Saaz as in identifying payments by Mr Cherney. There are no records of payments made in roubles whereby Mr Cherney directed payments due to him from Russian counterparties in roubles to the benefit of Mr Deripaska. However, even on the limited material available, a number of occasions of financial support by Mr Cherney for Mr Deripaska's operations have been identified and addressed in Section C above.

The position in 1995-1998

100. Mr Cherney has identified a number of payments which were made to companies controlled by Mr Deripaska in this period. In a number of instances, he accepts that the evidence shows that these were made for the purposes of copper investments or trading, and accordingly do not represent a contribution to his pleaded partnership with Mr Deripaska. However, there are numerous such payments which can be traced through to use for the aluminium business or related assets.

101. Payments made by Mr Cherney's companies Blonde, Operator Trade Center, CCT, and Arufa which can specifically be traced through to the aluminium business or companies conducting that business are identified in the table in Annex 3 to these submissions, using the payment numbers adopted by Mr Davidson of Crowe Clarke Whitehall in his reports, and which were adopted in the Further Information served on 13 June 2012.

102. In addition to those payments there are a significant number of other payments made by Mr Cherney's companies to companies controlled by Mr Deripaska, but where the use to which the payment was put and the specific reason for it cannot now be traced to a company involved in the aluminium business.

103. In addition to these funds, there were also very substantial funds derived from what Mr Cherney says was his joint business with Mr Deripaska – for example the proceeds of the Tradalco business undertaken through Bluzwed Metals – which were used to fund the acquisition of other aluminium assets, which represent a contribution by Mr Cherney as much as Mr Deripaska.

104. Finally, it was clearly Mr Cherney's connections with UOB which led to that bank providing

finance for the Cherney-Deripaska side of the Tradalco business, as Mr Cherney states.[200] This much is clear from the note of Mr Coquoz's "due diligence" visit to Russia with Mr Hagman in November 1995,[201] in which Tradalco is described as part of "*Blonde Group*" and a joint venture with the "*Michael Cherney Group, the latter is shareholder of our client Blonde that benefits from the line of US$15 million for the copper trading operations*" and notes:[202]

> "*Our client applies for the finance of tolling in Sayanogorsk (30 to 45 days maximum) according to the same scheme as for our client Blonde*".

105. Throughout this period it is relevant to consider what amounts are recorded in the private cash registers as distributions to Mr Cherney (or "A4" as he was identified therein). The answer, in contrast to Mr Deripaska (A3), Mr Popov (A1) and Mr Malevsky (A2), is that no distributions are recorded.

The position in 1999 and 2000

106. The position in 1999 and 2000 is complicated by two factors.

107. The first is that in 1999 Mr Cherney did, for the first time, receive distributions from the partnership which he used to provide finance in relation to the acquisition by a third party of a stake in the Israeli telecoms company Bezeq.[203] The 1999 "cash register" records distributions to "A4" of US$48.3 million in November 1999. The payments are pleaded by Mr Deripaska as *dolya* payments [37] (US$2 million from Benet to CCT on 29 January 1999), and [44] to [47] (payments from Benet to Arufa and one payment from Fastact to Arufa totalling US$48.3 million, all made in November 1999). The payments of US$48.3 million were made on the basis of what was described as a "loan agreement" between Benet and Arufa of 19 November 1999 which was signed by Witness B on behalf of Benet.[204] However, in this litigation, the fact that a loan document is drawn up to explain payments does not always tell you the character of the payment.

108. The second feature is that in 1999, Mr Cherney sold his substantial interest in the Pavlodar alumina plant which Mr Cherney had obtained in 1998, when (at Mr Deripaska's prompting) he exchanged his more valuable 20% interest in a range of Kazakh investments held by the Kazakh group for the interest in Pavlodar.[205] Mr Cherney was paid US$100 million for his interest over the period 1999 to 2000.[206] Some of these funds were paid by the "Pavlodar interests" through entities connected to them directly to Arufa. However for a significant number of payments, the "Pavlodar interests"

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200 Cherney6, para.164 {7A/6/263}
201 {18A/1/14}
202 {18A/1/18}
203 Cherney 6, para 456 {7A/6/386}
204 {45B/142/613}
205 Cherney 6, paras 262-265 {7A/6/304} - {7A/6/307}
206 US$100,090,938.80. The relevant payments can be found at {47/46A/271A} , {47/47/272} and {47F/109/1608}

were owed money by Metcare (a company owned by Mr Cherney and Mr Deripaska) for alumina supplied by the Pavlodar plant to Saaz. The "Pavlodar interests" instructed Metcare to pay amounts owed in respect of supplies of alumina to Arufa in order to discharge their own obligation to Mr Cherney for the purchase of his interest in the Pavlodar plant. Finally, in respect of some of these payments, Metcare paid these amounts to Fastact rather than to Arufa (with the result that they remained in the aluminium business). The amounts paid by Metcare to Fastact on behalf of Arufa were: US$2,318,820 paid on 26 April 2000;[207] US$1,590,000 paid on 27 April 2000;[208] and, US$4,210,000 paid on 28 April 2000,[209] leading to a total of US$8,118,820.

109. In addition, there were a number of payments totalling US$41,600,097 made by Arufa either to Fastact or for the benefit of Fastact. They were made as follows: US$6,000,003.01 to Fastact on 21 April 2000; US$4,500,020.90 to Fastact on 25 April 2000; US$2,800,020.44 to Fastact on 25 May 2000; US$4,000,021.47 to Fastact on 8 June 2000; US$11,500,000 to Fastact on 10 July 2000; US$7,400,021.24 to Fastact on 24 July 2000; and, US$5,400,019.94 to Sharp Enterprises for Fastact on 13 September 2000.[210]

110. The combined total of the payments made by Metcare to Fastact on behalf of Arufa and by Arufa to Fastact or on behalf of Fastact is US$49,718,948.64, i.e. in excess of the amount which had been paid to Mr Cherney and used for the Bezeq loan in 1999. In addition, there are two payments to Arufa by Fastact on behalf of Benet in 1999 – US$3,000,000 on 17 May 2000[211] and US$418,820 by Fastact on behalf of Benet on 30 June 2000.[212]

111. In addition to these payments, there are a number of other payments made in 2000 which Mr Cherney says represent contributions by him when cash was required by the business, in particular to make balancing payments under the merger agreement of the Sibal companies and the Sibneft companies. The assets contributed by the Sibneft companies to that merger exceeded in value those contributed by the Sibal companies, with the result that a balancing payment of US$575 million was required to be paid by a series of hefty cash instalments.[213] The evidence in relation to these payments said by Mr Cherney to represent contributions is, pursuant to the order made at the hearing of 13 June 2012, still developing, and that further evidence will be awaited before detailed

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207 This appears on {47/46A/271A}

208 This appears on {47/46A/271A} as one of a number of payments on 28 April 2000 (US$1,356,660 plus US$2,298,890 plus US$233,340 plus US$409,995 plus US$1,501,115) which add up to US$5.8 million: i.e. the total of this payment and the following payment of US$4,210,000.

209 See the preceding footnote

210 The first six payments are listed on {47F/109/1608} ; the seventh payment appears in {62B/12/725}

211 This payment appears on {47A/54/292}

212 This payment appears on {47F/109/1608} . It would appear that this payment was made because it had been agreed that US$25 million would be provided by Arufa, but US$25,418,820 had been taken, leading to the return of US$418,820: see {47/47/272} . Note also that {47F/109/1608} states that of US$50 million paid to Arufa, the aluminium business has taken US$32,400,000. Of this amount US$7.4 million paid by Arufa to Fastact on 25 July 2000 was attributed as a loan from Mr Popov. The difference between these two figures is, of course, US$25 million.

213 As to which see further section K below

comment is made. Suffice it to say at this stage:

1) That the topic of the payments made into the business by the supposed extortioners in 2000 (a *dolya*-free year, it will be recalled) is a very important topic, and one that will have to be explored in detail at trial; and,

2) On any view, over the period from February to September 2000, companies in which Mr Cherney was interested paid very substantial sums into the aluminium business, in addition to the payment of just over US$49 million made by or on behalf of Arufa referred to above. They are made in circumstances in which Mr Deripaska asserts that his "*business had sufficient funds*" to make the payments required under the merger agreement.[214] Mr Deripaska has failed to explain why these payments were provided or for what they were used. Moreover, the combined total of these payments are double the only amount recorded in the private cash registers as payments to "A4" – i.e. the payments in from Mr Cherney are double the payments out to him. All in all, a very strange *krysha*.

The significance of payments made for the purposes of the copper business

112. As noted above, a significant number of the payments identified as having been made from companies controlled by Mr Cherney to companies controlled by Mr Deripaska have been identified as payments used for the purposes of copper investments and not contributions made for the purposes of Mr Cherney's aluminium partnership with Mr Deripaska. Those payments involved payments of many millions of dollars under transactions starting from mid-1994. They involved companies established and staffed by Mr Deripaska – in particular Nash Investments Ltd, but also Aluminiproduct Impex and Ruskabel – involved in substantial transactions with and for the benefit of Mr Cherney's copper business with Mr Makhmudov. The transactions continued well into 1997.

113. The fact that these transactions proved to have been used for copper and not aluminium is hailed as a major forensic triumph by Mr Deripaska's legal team. However, it is important to pause and consider Mr Deripaska's case in relation to these transactions, and whether this account can subsist alongside Mr Deripaska's *krysha* case against Mr Cherney. On Mr Deripaska's account:

1) He met Mr Cherney in May 1994, but did not come under any *krysha* for a year. In the intervening 12 months he had no business relationship with him (indeed he claims never to have had such a relationship).

2) Within a month or 6 weeks of meeting Mr Cherney ("*in June 1994*"), he met Mr Makhmudov as a result of an introduction from Mr Arik Kislin (who administered a sector of Mr Cherney's business affairs through Blonde Management) and possibly on Mr Cherney's

[214] Deripaska3, para 454 {8B/27/685}

recommendation.[215]

3) From June 1994 onwards, Mr Deripaska saw Mr Makhmudov regularly such that they became good friends. In "*mid 1994*" – so virtually instantaneously after their first meeting – Mr Deripaska was helping Mr Makhmudov to analyse and acquire assets in the copper industry, and to improve the business processes in his group, as a result of which "*the UMMC Group*[216] *made use of companies and personnel of the Deripaska Group for the operation of its copper business over a period of time*", with "*companies involved both in the operation of the UMMC Group's business and in the operation of the Deripaska Group's business*" and the relationship between the groups became "*complex*".[217]

4) Mr Deripaska's narrative time line is very vague. He says that "*in 1994-1995*" his group assisted Mr Makhmudov's group in acquiring shares in various enterprises including Gaisky GOK, "*advised [Mr Makhmudov's] employees on payment procedures provisions in various jurisdictions, provided short term loans, assisted in legal matters, including calling and holding of shareholders' meetings, making foreign trade contracts and so on*".[218] But he is forced, by the documents disclosed and the payments which Mr Cherney had pleaded, to admit the scale of their interaction.

5) This all happened, it is said, without Mr Deripaska knowing where Mr Makhmudov's money came from. And it all happend without his having any financial interest in Mr Makhmudov's business, but rather for reasons of "*a friendly nature*" because he and Mr Makhmudov (very rapidly it would seem) became "*genuinely good friends*".[219]

114. There are a number of obvious difficulties in this account. First, Blonde was clearly already a very substantial and successful business by the time Mr Deripaska met Mr Makhmudov:[220] the suggestion that the business needed this degree of help and support from the significantly smaller operation of Mr Deripaska's companies cannot be taken seriously. Second, the degree of inter-meshing between the two business over the following three and more years, the extent to which companies controlled by Mr Deripaska and their staff were involved in the copper business, and the sheer scale of the financial interaction between these enterprises cannot credibly be explained by assistance given as a result of relations of a "*friendly nature*" developing from an introduction in June 1994. Third, in circumstances in which Mr Deripaska now accepts that throughout this period

215 Deripaska3, para 246 {8B/27/628}

216 A term which did not come into being until much later on, but which for forensic reasons Mr Deripaska uses to describe Mr Cherney's copper partnership with Mr Makhmudov.

217 Deripaska 3, paras 248-249 {8B/27/629}

218 Deripaska3, para 251 {8B/27/630}

219 Deripaska3, para 252 {8B/27/630}

220 Its unaudited financial statements as at 31 December 1993 showed turnover of US$25.9 million {67A/8/379} . By June 1994, when Mr Deripaska says he met Mr Makhmudov, turnover was US$108 million and profit US$44.08 million: {67A/8/386} . By 31 December Blonde had total assets of US$81.9 million {67A/8/392} .

Mr Cherney was one of the ultimate beneficial owners of, and in control of, Blonde,[221] and given what he claims were his "*friendly*" relations with Mr Makhmudov, the suggestion that all of these transactions took place without Mr Deripaska knowing that he was dealing with Mr Cherney is absurd. Indeed given the number of common interactions between Mr Cherney, Mr Makhmudov and Mr Deripaska over the ensuing years – at numerous meetings, in Neoton, in Radom, in Yudashkin, in Soyuzcontract, in Kru Trade – Mr Deripaska's evidence that he did not know that Mr Cherney and Mr Makhmudov were partners is untenable.

115. Mr Cherney's case, of course, is that he had invited Mr Makhmudov to become his partner in the copper business, and he had invited Mr Deripaska to become his partner in the aluminium business. By June 1994, each was his junior partner in their respective spheres, and each was aware of his partnership with the other. These relationships would make perfect sense of the co-operation provided by companies managed by Mr Deripaska (operating in the aluminium business) with the companies managed by Mr Makhmudov (operating in the copper business). These relationships would also have serious implications for Mr Deripaska's *krysha* case: it is simply incredible that for a period of nearly 12 months, Mr Deripaska was having legitimate business dealings with Mr Cherney's and Mr Makhmudov's copper business, at which point a *krysha* is imposed in respect of the aluminium business, while legitimate business dealings continue in relation to the copper business. No doubt it is for this reason that Mr Deripaska, as Mr Cherney submits, has given an obviously untruthful account of the nature of his dealings with Mr Makhmudov and Mr Cherney prior to May 1995, and whether he understood they were dealings with Mr Cherney. If the Court concludes that Mr Deripaska has not told the truth about these issues, this will provide a powerful pointer to which of the parties is telling the truth about their relationship in the context of the aluminium business.

[221] Mr Deripaska has served a Notice to Admit to this effect: {9/4/70}

F. THE BALANCE SHEETS

116. There are a series of balance sheets and associated spreadsheets kept by and on behalf of Mr Deripaska. They have most frequently been referred to in this litigation as the "private cash registers", in accordance with the (wholly inadequate) description afforded to them in the witness evidence served on behalf of Mr Deripaska in December 2011.[222] These are very important documents in the case. They are the subject of evidence from Mr Deripaska, Witness C, and Witness B and appear to have been used to identify some of the payments which have been pleaded on various occasions as *dolya* payments. One of the many significant features of some of these documents – to which reference is made below – is the entry of figures against four individuals: A1, A2, A3, and A4.

The evidence from Mr Deripaska's witnesses as to the balance sheets

117. In his first witness statement Mr Deripaska said that the balance sheets were kept *"as part of keeping track of what was going on in relation to krysha"* but without him telling his staff what they were for.[223] He did not explain who A1, A2, A3, and A4 were (although partial explanations were given in the witness statements of Witness C and Witness B, as explained below). In his supplement statement, by implication Mr Deripaska identifies Mr Popov as A1 and Mr Cherney as A4.[224] He did not identify A2 or A3, but makes it clear that he is asserting that the sums recorded against all of A1, A2, A3, and A4 were *dolya* payments.[225]

118. Responsibility for maintaining the balance sheets originally seems to have belonged to Witness C who worked for Mr Deripaska for some 13 years.[226] It is explained in Witness C's first statement that the balance sheets were created due to the *"increasing number of unclear payments"* to Mr Cherney, Mr Malevsky and Mr Popov in 1997.[227] That statement identified Mr Malevsky as A2 and Mr Popov as A1, but not A3 or A4. In 1998 Witness C passed this responsibility to Witness B, who has worked for Mr Deripaska since 1997.[228] In relation to the balance sheets, Witness B states that the documents provided Mr Deripaska "*with an idea as to his overall financial position and also some account of the krysha that he paid*".[229] Witness B's statement states that from 2000, Witness B started keeping *"similar information"* on a specially designed database called Finprovod. Witness B

222 Deripaska3, the heading above para 382 {8B/27/668} and paras 410 {8B/27/675} & 419 {8B/27/676} ; First witness statement of Witness C, para 102 {8D/33/1116} ; First witness statement of Witness B, para 11 {8D/32/1034}
223 Deripaska3, para 38 {8B/27/566} ; 407-409 {8B/27/675}
224 Deripaska4, paras 496.3 and 496.4 {8F/64/1738}
225 Deripaska4, paras 96.2 {8F/64/1638} and 496.3 {8F/64/1738}
226 First witness statement of Witness C, para 1 {8D/33/1089}
227 First witness statement of Witness C, paras 102-107 {8D/33/1116} - {8D/33/1117}
228 First witness statement of Witness B, paras 5-7 {8D/32/1033} - {8D/32/1034}
229 First witness statement of Witness B, paras 43-49 {8D/32/1044} - {8D/32/1046}

identified Mr. Cherney as A4, Mr. Popov as A1 and Mr. Malevsky as A2, but not A3.[230]

119. Nowhere in either the original or supplemental witness evidence was A3 identified. The identity of A3 was stated for the first time when the Court directly asked Mr Deripaska's Leading Counsel this question at the hearing on 1 May 2012, and then confirmed in Further Information served by Mr Deripaska on 25 May 2012:[231] it is Mr Deripaska. That Further Information says that the payments to A3 represent "*payments and expenses related to the Defendant's business and charitable expenses*" and "*some payments and expenses that related to the Defendant personally*".

The balance sheets

120. The balance sheets are lengthy, detailed Excel spreadsheets. Whilst they are important documents, they are ill-suited to written exposition; they are best understood when considered electronically, in "native" format, when the spreadsheets can be "brought to life", and one can see how they "work", and how the figures in them are derived from formulae and the like. The Court will be taken through the detail of the balance sheets in oral opening. For present purposes, an initial introduction will suffice.

121. In light of indications in the documents, a question arises, which will have to be explored in the evidence, as to whether similar documents existed for the period prior to 1997 which have not been disclosed (although each of Mr Deripaska Witness C and Witness B give evidence that the process of keeping the "private cash registers" began in 1997). In particular it will become clear to the Court as it learns more of the evidence in this case that Mr Deripaska has an eye for recording and reviewing fine detail. There are no sums so trivial that they do not feature in a record or journal, no outgoing too meagre to go unnoted. To make payments of millions of dollars to Mr Deripaska, Mr Malevsky, and Mr Popov without carefully recording the figures would be wholly alien to him.

122. The 1997 balance sheet consists of 16 spreadsheet tabs, comprising 24 printed pages.[232] It records a financial position at month ends and reflects changing asset and liability positions. There is a combined balance sheet for the Radom Foundation and Sibal and bank balances for various companies including Nash Investments, Radom Foundation, Bluzwed Foundation, Meganetty Foundation, Bluzwed Metals, and CCT. There is also a "loans receivable" section, and a more detailed *"debtors"* spreadsheet.

123. There is a table on the sheet with references to A1, A2, and A3, which appear under the heading "*profit*" and which record what Mr. Cherney contends are drawings by each of them of profit from the business, derived from another spreadsheet tab called "*profits*".

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230 First witness statement of Witness B, para 54 {8D/32/1047}
231 Response 5 {2A/17/500}
232 {26/2/89} - {26/2/89Z}

124. The 1998 balance sheet comprises 37 printed pages contained in 14 spreadsheet tabs.[233] This balance sheet has separate reports for Radom and Sibal, and records inter-company loans from Radom to Sibal. The Radom balance sheet has a section on "*other investments*" including the Yudashkin fashion business. It also has a section on "*Centre Loans*" which includes loans to "*IM*" (Mr Makhmudov) of US$13,586,179. The liabilities of Radom include "*undistributed profits of SA*" (i.e. of Sibal) which matches, with minor differences, the monthly profit of Sibal as shown in the Sibal balance sheet. It also includes undistributed profits for Radom of US$55 million for 1995, US$34 million for 1996, and US$88 million for 1997 and shows what Mr. Cherney says are drawings for A1, A2, A3, and A4. In the Sibal balance sheet, the US$89 million profit is reported in the liabilities side but also appears on the "*asset*" side of the balance sheet under the heading "*miscellaneous*" and is described as "*Radom*". It also records shares that have been acquired in various aluminium entities and loans provided by Sibal to some of those entities. There are also bank balances for various entities.

125. The balance sheet and associated spreadsheets for 1999 comprise 110 printed pages contained in 21 tabs.[234] Once again there are separate balance sheets for Radom and Sibal, and inter-company loans between them. The Radom balance sheet shows undistributed profit for 1995, 1996, 1997, and 1998 and drawings for A1, A2, A3 and A4. There is a new entry "A4.1" which shows the sum of US$13,636,189 from January to December 1999. This was the closing balance for the previous year of the sum treated as a loan to Mr Makhmudov, and Mr Deripaska has alleged that this loan to Mr Makhmudov was written off as part of the *krysha*. The inconsistencies between this account and the contemporaneous documents will be explored in evidence. So far as the Sibal balance sheet is concerned, the liabilities reflect a loan from Radom of US$210.5 million at the end of 1999.

126. The balance sheet for the first half of 2000 – those disclosed seem to have been prepared in July 2000 and cover the first six months of the year – are considerably shorter.[235] The balance sheets of Radom and Sibal are shown separately, with inter-company loan balances between Radom and Sibal shown as to and from GSA Cyprus. In the Radom balance sheet the profits for 1995, 1996, 1997, 1998, 1999 and the "*current year*" (2000) are set out for A1, A2 and A4 (including A4.1). There are no further drawings: the opening balance remains the same throughout the first 6 months of 2000. One striking feature of the 2000 balance sheet – at a time when cash payments were required from Sibal pursuant to the merger agreement between Sibal and Sibneft – is that there are no *dolya* payments. On the contrary the individuals alleged to represent OCGs are making, and can be seen to be making, cash transfers into the business. The pattern of payments, and the manner and care in which the various payments are recorded, cannot be explained as some form of *krysha*, however "sophisticated" the operation is said to be. This is clearly a partnership at work.

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233 {47B/66/486} - {47B/66/576}
234 {26A/2/93} - {26A/2/93BF}
235 {47/53/278} - {47/53/290}

127. Although Mr Deripaska has not disclosed any balance sheets or equivalent documents for the period after June 2000, a number of forward-looking cash flow projections have been disclosed. For present purposes, it is sufficient to note that, on alternative scenarios, repayments are forecast of the substantial amounts due to "*IKM*" and "*II*" (Ivan Ivanovich)[236] (as recorded in the 2000 balance sheet) over the second half of 2000 and to the end of 2001.[237] One of the forecasts[238] has a projection for May to December 2001. It projects a payment of US$7.4 million from "*II*" in July 2000: an amount that comes in from Mr Cherney's company Arufa to Fastact on 24 July 2000.[239] Some of the forecasts make different assumptions as to "*monthly income of RA*" – presumably the merged business with Mr Roman Abramovich – and those who prepared the spreadsheets and project repayment state "*we believe that we can roll over loans*". Mr Deripaska's explanation as to how this process is compatible with the OCG-imposed *krysha* arrangement for which he contends is awaited.

Issues which arise as to the balance sheets

128. It is the Claimant's case that the balance sheets are documents of the utmost importance in the case. They are not documents which were produced to record *dolya* payments. Nor are they documents which are as marginal, inaccurate, or incomplete as Mr Deripaska now seeks to suggest. There are a large number of these documents, which were clearly assembled and maintained over a considerable period of time, with great effort and considerable knowledge (albeit they do inevitably contain errors). The terms and nature of those documents are utterly inconsistent with the explanation and characterisation of them by Mr Deripaska, Witness C, and Witness B in their witness statements. The documents self-evidently record distributions to partners in a business in accordance with pre-determined shares, the partners being Mr Malevsky, Mr Popov, Mr Deripaska and Mr Cherney

129. In addition to the evidence of Mr Deripaska, Witness C and Witness B referred to above, in Answer 5(4) of the Further Information served on 25 May 2012, Mr Deripaska says in respect of distributions shown on the 1998 and some of the 1999 balance sheets that:[240]

> "*… these calculations in green were made to provide a cross-check that dolya payments that were or were to be made to or for the benefit of the Claimant, Mr Malevsky and Mr Popov could, if necessary, have the appearance of commercial legitimacy from the Radom structure ... These artificial calculations were made to check that the Radom structure could be used to justify krysha payments that were made or were to be made to or for the benefit of the Claimant, Mr. Malevsky or Mr Popov ... in the event that some explanation for those payments was required by banks or state authorities*".

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236 Witness B says this was "*a code name given to Mr Malevsky*": First witness statement of Witness B, para 52 {8D/32/1046}

237 See {47A/58/310} - {47A/58/320} , {47A/59/321} - {47A/59/330} , {47A/60/331} - {47A/60/341} , and {47A/61/342} - {47A/61/354}

238 {47A/59/321} - {47A/59/330}

239 {62/9/275}

240 {2A/17/501}

What happened after 2000?

130. There are no balance sheets after 2000. Witness B has stated that from 2000, he kept "*similar information*" on a specially designed financial database called "FINPROVOD". Mr Cherney has been told that all relevant information from "FINPROVOD" has been disclosed, but the extracts from FINPROVOD which have been provided are very limited, and do not perform an equivalent function to the balance sheets. Mr Cherney has significant concerns as to the completeness, authenticity and accuracy of the FINPROVOD material which has been produced. Mr Cherney disputes Mr Deripaska's characterisation of what it is said any of the FINPROVOD entries represent.

    1) A Notice requiring Mr Deripaska to prove the authenticity of this material was served on 31 January 2012.[241]

    2) By an application issued on 24 April 2012, disclosure was sought of all documents containing equivalent material to the balance sheets for the period August 2000 to December 2004, and for a mirror image of FINPROVOD which could then be inspected. This followed earlier correspondence in March and April 2012. This application was resisted by Mr Deripaska, who offered to conduct further searches of FINPROVOD data.

    3) By an application issued on 27 April 2012, Mr Cherney sought disclosure and further information relating to the balance sheets and FINPROVOD, which Mr Deripaska agreed to address in parallel with the further searches of FINPROVOD.

    4) In the event, by the order of 1 to 3 May 2012, the Court ordered further disclosure to be given and Further Information to be served.

131. That additional disclosure was provided on 8 June 2012, and Mr Cherney's legal team has been reviewing it. That disclosure was served under a cover of Quinn Emanuel's third letter of 8 June 2012 which confirmed that it is Mr Deripaska's position that all relevant documents on FINPROVOD have been searched for and disclosed, and included various explanations from Witness B which are to be confirmed in a witness statement. That material and those assertions are being considered, but on any view, these are matters which will have to be investigated in some detail in cross-examination.

[241] It has been made clear in correspondence that the general non-admission of this type of document covers all the FINPROVOD disclosure – i.e. including the most recent disclosure.

G. THE ROLE PLAYED BY MR MAKHMUDOV

132. Mr Makhmudov has for some time enjoyed a status as one of the most successful businessmen in Russia.[242] In the context of these proceedings, his relationship with respectively Mr Deripaska and Mr Cherney represents a significant anomaly in Mr Deripaska's case. In summary, Mr Makhmudov's position is one in which:

1) Mr Deripaska has adduced evidence from Mr Sam Kislin to the effect that Mr Makhmudov was, as Mr Cherney has always said, someone who worked for Mr Cherney during the course of his relationship with Mr Kislin.[243] Mr Kislin appears to accuse Mr Makhmudov, as well as Mr Cherney, of making his start in business by appropriating Mr Kislin's business and contacts.[244] Yet Mr Deripaska contends that Mr Makhmudov went on to become a legitimate billionaire businessman, while Mr Cherney was never a proper businessman but always a criminal.

2) Mr Makhmudov's status as a clean and legitimate businessman is not only fully accepted by Mr Deripaska, but Mr Deripaska in fact relies upon his own business dealings with Mr Makhmudov in support of his case and in an attempt to explain dealings with companies in which Mr Cherney clearly had a major (and indeed dominant) interest.

3) Mr Deripaska accepts that he was introduced to Mr Makhmudov by or through Mr Cherney, and that he and Mr Makhmudov formed a close friendship and business relationship from mid-1994 onwards.

4) Mr Makhmudov's attendance at various meetings attended by alleged criminals/OCG representatives (which were also attended by Mr Cherney) has not been the subject of comment or suspicion by Mr Deripaska. The similarities between the evidence of Mr Makhmudov's connections to those alleged to be criminals and the evidence relied upon by Mr Deripaska as against Mr Cherney is considered separately in Section J below.

5) Mr Makhmudov's involvement in numerous payments or entities which feature in Mr Deripaska's case on the payment of alleged *dolya* has not been the subject of comment or suspicion by Mr Deripaska.

6) Mr Makhmudov's business dealings with Mr Cherney throughout the material time are relied

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242 The Forbes Rich List of 2012 ranks Mr Makhmudov as the 16th wealthiest Russian with an estimated fortune of US$8.2 billion, 2 places beneath Mr Deripaska whose current fortune is estimated at US$8.8 billion. The Forbes entry for Mr Makhmudov includes the following statement: "*Mr Makhmudov's first moves as a businessman were with the Chernoy brothers, the Reuben brothers and their Trans-World Group, once the largest metals-trading operation in Russia*": {135A/1/329} - {135A/1/330} .

243 Kislin1, para 34 {8D/38/1238}

244 Kislin1, para 46 {8D/38/1241}

upon by Mr Deripaska as part of his case.

7) Mr Deripaska now accepts that entities which are alleged to be *dolya* recipients are in fact entities in which Mr Makhmudov had an interest.[245]

8) Mr Deripaska accepts that Mr Makhmudov was named as a beneficiary of the Radom Foundation, alongside Mr Cherney, Mr Deripaska, Mr Malevsky and Mr Popov, through his interest in the Witestone Foundation.[246]

133. Mr Deripaska has even gone so far as to give hearsay evidence himself of discussions he claims to have had with Mr Makhmudov about Mr Cherney's early copper business with Mr Makhmudov (the effect of which was apparently a suggestion that certain contracts Mr Makhmudov was shown reflected the type of business Mr Deripaska and Mr Makhmudov did together, Mr Makhmudov (mis-)remembering that the business had been done in earlier years rather than on the dates shown).[247] Mr Makhmudov clearly did not offer any support for Mr Deripaska's case that Mr Cherney was not a proper businessman, or else evidence to this effect would feature as part of Mr Deripaska's case.

Mr Deripaska's relationship with Mr Makhmudov

134. The business relationship between Mr Deripaska and Mr Makhmudov was first pleaded by Mr Deripaska in his Further Information of 5 August 2011, in the context of explaining cash flows between companies in which Mr Cherney was interested, and companies which Mr Deripaska claimed were owned solely by him. While Mr Deripaska states that he was not in a full partnership with Mr Makhmudov, there is no question that on both parties' case they enjoyed a significant business relationship.[248] Pursuant to that relationship, Mr Deripaska contends that a number of entities formally within what he calls "the Deripaska Group" were in fact shared with Mr Makhmudov for the purpose of Mr Makhmudov's business in the Ural Mining and Metallurgical Company ("UMMC"),[249] with his staff effectively running aspects of UMMC's business.

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245 For example, Mr Deripaska's current evidence is that Blonde Investment Corporation was Mr Makhmudov's company (Deripaska3, para 246 {8B/27/628} and that Arufa Invest and Trade was used by Mr Makhmudov as his "treasury company" (Deripaska4, para 312 {8F/64/1695} . Those entities are alleged to have received multi-million dollar sums from Mr Deripaska pursuant to a protection racket and were first mentioned in Mr Deripaska's Further Information of 21 October 2010 in response to Request 20: {2/8/208} . In addition to those entities explicitly referred to by Mr Deripaska, Mr Makhmudov was also the joint owner of another alleged *krysha* recipient, Archers: see Cherney 6, para 451 {7A/6/384}

246 Deripaska3, paras 363-364 {8B/27/663} . It is Mr Cherney's case that Mr Makhmudov held his interest in Radom on behalf of Mr Cherney: see para.3(4) of the Re-Re-Amended Reply {2/5/46}

247 Deripaska 4, para 114 {8F/64/1644}

248 See, in particular, paras 4(b), 5, 19(d)&(e), and 23-29 of Mr Deripaska's Further Information of 5 August 2011: {2A/13/388} - {2A/13/389}

249 On Mr Deripaska's case, this applies to at least [paragraphs references are to the Further Information of 5 August 2011 at {2A/13/384} - {2A/13/393} : Alinvest (paras.16(b) & 18(a)); Nash Investment Ltd

135. Mr Deripaska provides some elaboration about the extent of his business dealings with Mr Makhmudov in his Third Witness Statement:[250]

> "*The UMMC Group made use of companies and personnel of the Deripaska Group for the operation of its copper business over a period of time. In some cases … companies were involved both in the operation of the UMMC Group's business and in the operation of the Deripaska Group's business … our groups operated closely together for longer until a full separation of our two groups' activities took place through the segregation of companies and transfer of staff according to the area of expertise … [From around mid-1994 into 1997] Mr Makhmudov and I were in close contact, and my group assisted him and his group with their copper related activities*".

136. On 12 May 2010, Mr Deripaska gave rather different evidence to the Spanish magistrate:[251]

> "*Makhmudov asked me to purchase the shares of Gaisky GOK. I helped him and my company was purchasing Gaisky GOK shares for him for consideration as a professional service … That was in 1994-1995. <u>This is the only time I had business relations with Makhmudov</u>*".

137. The strong business relationship between Mr Deripaska and Mr Makhmudov was matched by a close friendship:[252]

> "*From [the first meeting], I started to see Mr Makhmudov quite regularly (including apart from work) and we became quite good friends. I often came to his office and he came to mine … By [1995], I was genuinely good friends with him and respected him*".

138. Mr Deripaska does not seek to question Mr Makhmudov's legitimacy and credibility as a businessman. The credibility of Mr Deripaska's account of events, therefore, falls to be tested against this fixed (and for Mr Deripaska, fatal) point of reference.

<u>Mr Cherney's relationship with Mr Makhmudov</u>

139. It is an important part of Mr Deripaska's case that substantial payments made by Mr Cherney to Mr Deripaska's entities were in fact contributions to Mr Cherney's joint business interests with Mr Makhmudov. For example:[253]

> *"… payments [to Nash Investments] alleged by Michael Cherney to have been investments in my aluminium business were payments related to the copper business of the UMMC Group. Payments by Blonde to Nash were made to fund the copper business of the UMMC Group owned by Iskander Makhmudov*".

(paras.19(d)); Gresham (paras23-29); Aluminproduct Impex (para.35); LLC Firma Promtorg (para.49); Ruskabel (paras.51(b) & 54).

250 Deripaska3, paras 248-255 {8B/27/629} - {8B/27/631} and 359 {8B/27/662}

251 {34A/24/483}

252 Deripaska3, paras 247&252 {8B/27/628} & {8B/27/630} . See also Deripaska4, paras 342 {8F/64/1702} and 346 {8F/64/1703} . Mr Deripaska attended Mr Makhmudov's wedding in 1997 (Deripaska4, para 418 {8F/64/1720} . Similarly, Witness C describes a "*close relationship*" and "*good personal relationship*" between Mr Makhmudov and Mr Deripaska (First witness statement of Witness C, paras 64 {8D/33/1106} and 70 {8D/33/1108} and Witness B states that "*Mr Deripaska was very close to Mr Makhmudov*" in 1997 (First witness statement of Witness B, para.26 {8D/32/1039}

253 Deripaska3, para.255 {8B/27/631}

140. Those contributions consisted of multi-million dollar sums paid over a number of years. The nature of the payments made by Mr Cherney has already been considered in Section E above. For present purposes, however, the importance of Mr Deripaska's case is that it corroborates the existence of a substantial business relationship between Mr Cherney and Mr Makhmudov in which it is not, and never has been, alleged by Mr Deripaska that Mr Makhmudov was the victim of a *krysha* by Mr Cherney or vice-versa (as explained below, Mr Deripaska appears to intend to introduce such an allegation obliquely in the recently served evidence of Witness M). Mr Haberman has analysed the source of money into Blonde at the time of these various payments in his report. He notes that "*based on our review of the Blonde cashbook and bank account information, more than US$65.0m of the other payments pleaded from Blonde appear to have been funded by receipts from third parties such as Glencore International and Gerald Metals*".[254] Mr Davidson similarly notes that the majority of payments to Blonde come from third parties,[255] with the largest payers being Glencore, Gerald Metals, and Eurogulf Minerals Metals Ltd.[256]

141. Importantly, Mr Makhmudov has recently confirmed the nature of his relationship with Mr Cherney in his deposition before a Spanish Judge on 19 July 2011:[257]

> "*JUDGE: Could you be more … and give more details about your relationship in the past with Mr Chernoy?*
>
> *IM: We are friends. Including some joint business projects. He left Russia in 1993. And then we gradually lost contact until there were no longer any relations. Practically by the beginning of the decade of 2000 our relationship was non-existent*".

142. Mr Makhmudov's evidence to the Spanish Judge reflected an interview given to Vedomosti on 2 February 2000 in which Mr Makhmudov was equally candid as to his relationship with Mr Cherney:[258]

> "*Interviewer: It is generally known that you are Mikhail Chernoy's partner.*
>
> *IM: He is my close friend, we have known each other for more than 10 years. We come from Tashkent. He is my friend first, then a business partner.*
>
> *Interviewer: You do business together, all the projects are jointly implemented, and you support one another.*
>
> *IM: If we are partners, then, of course, we do business together and help one another*".

143. Finally, the business relationship between Mr Cherney and Mr Makhmudov is supported by contemporaneous documents generated during the course of their partnership. These documents will have to be considerd in the course of the trial.

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254 Haberman1, para 5.86 {17/2/137}
255 Davidson1, para 5.22 {17/1/57}
256 Appendix 37.2, page 43 {17B/37/621}
257 {34C/44/829} - {34C/44/830}
258 {135B/1/529}

Mr Deripaska's shifting case

144. At recent interlocutory hearings Mr Deripaska's legal team sought, when resisting amendments to Mr Cherney's Further Information dated 11 January 2011, to suggest that the role of Mr Makhmudov was not in issue in these proceedings, and hence not addressed by Mr Deripaska. Such a suggestion is entirely misplaced if it was intended to convey that the nature of Mr Cherney's relationship with Mr Makhmudov was not important and informative in relation to the issue of the relationship between Mr Cherney and Mr Deripaska. The position is summarised in the skeleton argument that was served on behalf of Mr Deripaska for the hearing on 14 December 2011:[259]

> "*The (alleged) partnership with Mr. Makhmudov is relevant for three reasons:*
>
> *Mr Cherney puts it forward himself by way of `similar fact' evidence because he says it was the `template for my partnership with Mr Deripaska and that it typifies a relevant `feature of my business dealings'.*
>
> *Mr Cherney relies on that partnership as one of the sources of the wealth that he says he invested in Mr Deripaska's business.*
>
> *Mr Deripaska says that many of the payment now says were made into Mr Deripaska's aluminium business were, in fact, made into Mr Makhmudov's copper business, UMMC. It therefore becomes important to understand what that business consists of and what payments were made within it*".

145. The Court will observe that Mr Cherney's jurisdiction statement, for instance, was replete with references to Mr Makhmudov who along with Mr Deripaska he described as "*my closest partner and protégé*".[260] Far from suggesting that the relationship between Mr Cherney and Mr Makhmudov was one of *krysha*, Mr Deripaska's evidence proceeded on the basis that it was a legitimate relationship.

146. However, it appears from recently served (6 June 2012) evidence that Mr Deripaska now intends to do a *volte face* and to run a positive case that Mr Cherney did impose a *krysha* upon Mr Makhmudov. As as the date of writing he has not sought to re-amend his Amended Defence to run such a case. A curious feature of his evidence to date was to suggest that Mr Makhmudov probably realised that his (Mr Deripaska's) relationship with Mr Cherney was one of *krysha*; yet he does not suggest that he (Mr Deripaska) considered that the relationship between Mr Cherney and Mr Makhmudov was one of *krysha*. No doubt the feast will move again as Mr Deripaska has now provided evidence from Witness M who purports to say that during meetings in 1995 in Istanbul, at which both Mr Deripaska and Mr Makhmudov were present, Mr Cherney and Mr Malevsky boasted that they, Mr Deripaska and Mr Makhmudov, "*had accepted the Cherney-Malevsky krysha and were doing very well*".[261] It may be that Mr Deripaska considers that Witness M's evidence allows him to run a "*krysha* upon Mr Makhmudov case", notwithstanding his own evidence, the absence of

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259 {6A/10/514} at para.120
260 Cherney1, para 52 {7/1/24}
261 {8H/70/2152}

supporting evidence from Mr Makhmudov (to whom Mr Deripaska has spoken about this case and with whom he is on friendly terms), Mr Makhmudov's prior statements on the matter and the weight of documentation in relation to the business dealings between Mr Makhmudov and Mr Cherney. This remains to be seen.

Dealings between Mr Cherney, Mr Deripaska and Mr Mahkmudov

147. Mr Deripaska's case proceeds on the basis that he had a separate, legitimate, business relationship with Mr Makhmudov, who had his own legitimate business relationship with Mr Cherney, and yet Mr Deripaska's relationship with Mr Cherney was not a business relationship at all, but a relationship between the representative of OCGs and a victim of *krysha*.

1) Mr Deripaska accepts dealing with Blonde in relation to payments to and from companies he says he owned. Mr Deripaska has served a Notice to Admit which accepts that Mr Cherney was the ultimate beneficial owner of Blonde from 16 July 1993 to 31 December 2002.[262] Internal documents produced by Mr Deripaska list Blonde under the heading "*MCH's co*".[263]

2) By December 1994, before Mr Deripaska even suggests that the alleged *krysha* had begun, Mr Cherney, Mr Deripaska, and Mr Makhmudov were involved in the establishment of Neoton. As has been noted, from 15 December 1994 to 21 April 1997, the directors of Neoton were Mr Cherney, Mr Deripaska, Mr Makhmudov and Mr Karam, with only Mr Cherney having power to bind the company individually.[264] Even before its incorporation, business in the name of Neoton was undertaken with Mr Deripaska's company Alinvest including the provision of assistance in purchasing shares in the Russian copper concern Gaisky GOK.[265] The owners of these shares included Nash and Neoton and Neoton was also a shareholder of Uralelectromed, another Russian copper business.[266]

3) Mr Cherney, Mr Deripaska, and Mr Makhmudov obtained mobile telephones together from a common supplier and agreed to contact each other on those telephones.[267]

4) Mr Cherney, Mr Deripaska, and Mr Makhmudov were partners in Soyuzcontract, together with Mr Popov.[268]

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262 Paragraph 28 of the "Legal Person" combined Notice to Admit: {9/4/70}
263 {69A/11/447A}
264 {107/3/28} - {107/4/31}
265 {107/6/45} - {107/7/48}
266 {46A/100/439}
267 {118G/11/1984} - {118G/11/1996} ; {48A/1/419} - {48A/1/420} ; {48/1/229} - {48/1/232}
268 Syndikus note of 16 October 1998 {48D/1/1288}

5) Mr Makhmudov was involved in the Yudashkin fashion business together with Mr Cherney, Mr Deripaska, and Mr Popov.[269]

6) Mr Cherney and Mr Makhmudov were partners in the Meganetty Foundation.[270]

7) When the company LLC Aluminproduct was incorporated, 50% was held by LLC Aktsia, a company held by Mr Deripaska's mother, 25% by LLC Marka a company held by Mr Cherney's wife, and 25% by LLC AMG-2, a company held by Mr Makhmudov's uncle.

8) Mr Cherney, Mr Deripaska, Mr Makhmudov, Mr Nekrich and Mr Malevksy were partners in Kru Trade, which owned the Kusbass coal business.[271]

269 Popov1, paras.9.2, 25, and 27 {7E/34/1093} ; {7E/34/1100} - {7E/34/1101} . Mr Deripaska has not sought to dispute that evidence insofar as it relates to Mr Makhmudov.

270 This was confirmed by Mr Makhmudov himself at {103/1/2} ; {103/1/5A}

271 See Syndikus note of 18 May 2000 at {48J/1/2867} - {48J/1/2868}

H. SYNDIKUS AND THE ROLE OF THE RADOM FOUNDATION

148. From 1992 onwards, Mr Cherney used the services of the fiduciaries Syndikus to create and manage corporate structures on his behalf in a number of jurisdictions including Liechtenstein, Switzerland, and Cyprus.

149. Whilst there is a dispute as to the events which led to Mr Deripaska's introduction to Syndikus, it is common ground that, by 1994 or 1995 at the latest, he was also using their services.

150. The nature of the dealings which Mr Cherney and Mr Deripaska (and their respective representatives) had with Syndikus is of significant importance to this case. In particular, the parties have adopted diametrically opposing positions as to the role played by the Radom Foundation, an entity which was established by Syndikus in 1997 and in which both Mr Cherney and Mr Deripaska (amongst others) were beneficiaries.

151. Mr Cherney's case is that he understood that all of his joint aluminium business with Mr Deripaska was to be held (directly or indirectly) under the umbrella of Radom, including Sibal when that was incorporated in 1999, and that he believed that this had taken place. In contrast, Mr Deripaska's case is that no legitimate business was ever conducted through Radom: he claims that once a proposed merger between his aluminium business and Mr Makhmudov's copper business was abandoned, Radom "*became a vehicle though which Mr Cherney and others received some "protection payments", and it was otherwise used in connection with the krysha, and to give some apparent commercial rationale to the cash flows"*.[272] It was, he claims, "*a mere SPV which had nothing to do with the real assets*".[273] Importantly, Mr Deripaska claims that insofar as any aluminium assets were in fact transferred into Radom, this was done by Syndikus without his knowledge or authority and pursuant to the *krysha*.[274]

152. At all material times, the relevant employees of Syndikus included Hans-Peter Stäger, Jean-Pierre Domenjoz, and Tony Wyss. There is before the Court evidence from each of these individuals although sadly Mr Domenjoz passed away in May 2012 and his evidence is the subject of a hearsay notice.[275]

153. Significantly, each of the Syndikus witnesses corroborates Mr Cherney's case that he was in a partnership with Mr Deripaska. Their evidence is consistent with the vast number of contemporaneous records and documents that derive from Syndikus's files: taken together, these documents constitute an overwhelming body of evidence in support of Mr Cherney's case.

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272 Deripaska3, para 370 {8B/27/664}
273 Deripaska4, para 402 {8F/64/1716}
274 Deripaska3, para 374 {8B/27/665}
275 {9/12/187}

154. Recognising the difficulties which the Syndikus documents create for his case, Mr Deripaska (and those of his representatives who were primarily responsible for liaising with Syndikus on his behalf, namely Mr Karklin, Mr Mishakov, and Witness B) have latterly resorted to making very serious allegations of wrongdoing against the Syndikus personnel.[276] In particular, they seek to characterise any Syndikus document which contradicts Mr Deripaska's case as incomplete, inaccurate, and in some cases even fabricated. Mr Deripaska has even served a notice requiring Mr Cherney to prove the authenticity of all documents originating from Syndikus.[277]

155. At the outset, four points bear emphasis about this aspect of Mr Deripaska's case:

1) First, the suggestions that Syndikus were "*in Mr Cherney's pocket*" and that they were Mr Cherney's "*puppet firm*"[278] are not credible even on Mr Deripaska's own case. It is impossible to see what motive Syndikus would have had to prefer the interests of Mr Cherney over those of Mr Deripaska (and, indeed, no motive has been identified); more fundamentally if, as is alleged, Mr Cherney was imposing a *krysha* upon Mr Deripaska, why would Mr Cherney have needed to engage in a covert conspiracy with Syndikus? Why would Mr Cherney have needed to "*infiltrate*"[279] Mr Deripaska's business by secretly arranging for the transfer of his aluminium assets into Radom? Surely if, on Mr Deripaska's case, Mr Cherney had wanted to become a partner in Mr Deripaska's business he could simply have demanded this as part of the alleged extortion? Why the need for such subterfuge? The idea that Syndikus would have deliberately created false records of meetings and conversations is most unmlikley on any view, but it is made incredible when it is appreciated that the notes of meetings and conversations in question were documents created for internal record purposes only – i.e. notes for the file, rather than notes intended to be seen by others.[280]

2) Secondly, if there was any substance to the allegations which Mr Deripaska now makes against Syndikus, it is extremely surprising that he did not make them at the jurisdiction stage of these proceedings. At that stage, Mr Cherney relied upon a number of documents from Syndikus's files and he also adduced evidence from Mr Domenjoz in support of his case. In response, Mr Deripaska did not seek to challenge the authenticity of any of those documents or otherwise question the propriety of the Syndikus personnel.

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276 See para.23.3 of Schedule 3 to the Amended Defence, where Mr Deripaska alleges that Syndikus, "*without proper authority from Mr Deripaska, disloyally and in breach of their fiduciary duties to Mr Deripaska*", (1) changed the beneficiaries of the DKK Development & Research Foundation from Mr Deripaska and members of his family to Radom Foundation and (2) administered Bluzwed Metals Ltd and held its bearer share as if it were a company belonging to Mr Cherney, whereas it was in fact intended to be a company belonging to Mr Deripaska {2/4/44U}

277 See the Defendant's notice to prove documents at trial dated 13 December 2011, Section I, para 2 {9/9/173}

278 Deripaska3, paras 28 {8B/27/564} and 387 {8B/27/670}

279 Deripaska3, paras 28, 30, 31 {8B/27/564} - {8B/27/565} , 322 {8B/27/651}, 364 {8B/27/663} and 269 {8B/27/636} and Deripaska4, paras 45{8F/64/1620} and 273 {8F/64/1685}

280 Stäger2, para 16 {7E/39/1195} ; Wyss2, para 12 {7E/44/1244} ; para 6 of Mr Domenjoz's draft third statement, exhibited at page 230 of the exhibit to Ms Fidler's statement {156/2/266}

3) Thirdly, the Court should be aware that on at least two previous occasions Mr Deripaska has given evidence in relation to his dealings with Syndikus which was plainly false or calculated to give a false impression. Thus in 2005 Mr Deripaska said to the Swiss Examining Magistrate that he had only met Mr Domenjoz "*once or twice*"[281] and in his witness statement at the jurisdiction stage of these proceedings he said that "*for a relatively short period Syndikus handled the affairs of some of the companies involved in the aluminium business*".[282]

4) Fourthly, Syndikus transferred considerable assets on Mr Deripaska's instructions to entities controlled by Mr Deripaska and not administered by Syndikus.[283] As Mr Domenjoz explains:[284]

> "*In 2001 and the years that followed, my colleagues and I at Syndikus had no idea that Mr Cherney and Mr Deripaska had separated. Mr Deripaska's strategy now seems clear to us in retrospect. He transferred all of the companies and assets away from the Liechtenstein entities (leaving them empty) and into entities which were not administered by Syndikus*".

If the Syndikus employees were the dishonest, disloyal servants of Mr Cherney's interest as Mr Deripaska seeks to depict, these transfers would never have taken place.

Mr Cherney's introduction to Syndikus

156. Mr Cherney first met Syndikus in the spring of 1992, having been given the telephone number of Mr Stäger by an acquaintance called Dimitar Dimitrov. At the meeting Mr Arik Kislin – who acted as an interpreter – informed Mr Stäger that Mr Cherney wanted to purchase two entities immediately. These were Hiler Establishment and Furlan Anstalt.[285]

157. Syndikus subsequently went on to purchase or to establish a number of additional entities for Mr Cherney in the period between 1992 and 1994. Those entities included Republic Establishment,[286] CCT,[287] the Galenit Foundation,[288] and Blonde.[289] By the time Mr Cherney met Mr Deripaska in October 1993 (and even more so by May 1994), Syndikus were already administering a significant proportion of Mr Cherney's affairs.

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281 {31B/77/811}

282 Deripaska1, para 60 {8/4/17}

283 Domenjoz2, paras 64, 70, and 77 {7D/20/939} , {7D/20/941} , {7D/20/944}

284 Domenjoz2, para 77 {7D/20/944}

285 Cherney6, para.62 {7A/6/222}, Stäger1, paras.5-8 {7E/38/1163} - {7E/38/1164} , and Domenjoz2, para.7 {7D/20/910} . See the formation contract for Hiler Establishment dated 4 May 1992 at {92/1/1} - {92/1/2} and the formation contract for Furlan Anstalt dated 28 April 1992 at {84/1/1} - {84/1/7}

286 See the formation contract dated 2 September 1992 at {118/1/1} - {118/1/4}

287 See the formation contract dated 29 March 1993 at {72/1/1} - {72/1/3} This document was clearly backdated: see Cherney6, para 104 {7A/6/239} and Stäger1, para27 {7E/38/1169}

288 See the formation contracts dated 29 March 1993 at {85/1/1} - {85/1/8}

289 See the certificate of incorporation dated 14 July 1993 at {67/2/12}

158. In June 1993, Mr Stäger visited London where he met with Mr Cherney, Mr Arik Kislin, and the Reuben brothers.[290] According to Mr Stäger, during that visit he learned about Mr Cherney's partnership with TWG and their joint involvement in the Russian aluminium industry.

159. Although Mr Domenjoz neither attended the first meeting between Mr Stäger and Mr Cherney nor accompanied Mr Stäger when he visited London in June 1993, he subsequently became, along with Mr Stäger, Mr Cherney's main point of contact at Syndikus.[291] Together, Mr Stäger and Mr Domenjoz made a number of trips in connection with Mr Cherney's business activities:

1) In May 1994, they visited New York where they met with Mr Arik Kislin and Mr Kessler to discuss Mr Cherney's real estate business and to visit a number of properties that were owned by Mr Cherney.[292]

2) In May 1995, they visited certain plants in Russia and Kazakhstan, including the Bratsk plant, as part of their client due diligence checks.[293] Mr Domenjoz says that it became clear to Syndikus after this visit that Mr Cherney had very substantial business interests.

3) In March 1996, they travelled to Bulgaria where they met Mr Batkov to discuss certain litigation in which Mr Cherney was then involved.[294]

4) In the spring of 1996, they were also due to visit a number of copper mines in the Urals. They had agreed this trip in principle with Mr Makhmudov but ultimately it did not take place.[295] Syndikus's note of their conversation with Mr Makhmudov provides a good indication of the vast scale of business which he and Mr Cherney were carrying out at that time.[296]

5) Between 9 and 12 November 1997, they travelled to Russia where they visited the Saaz plant, a copper plant in Yekaterinburg, and the Rostar aluminium can factory in Dmitrov. This trip is considered in more detail below.

160. Instructions on behalf of Mr Cherney were generally provided to Syndikus by Mr Arik Kislin, Mr Kessler, Elena Skir (Mr Cherney's secretary), and later – that is from around 1994 onwards – Mr Karam.[297] Mr Karam, who was based in Switzerland and whom Mr Cherney met for the first time in around 1993, became responsible for the financial management of various aspects of Mr Cherney's business.[298] An early example of his work is that in mid-1994 he established a Swiss company

290 Stäger1, paras.9-11 {7E/38/1164} - {7E/38/1165}
291 Cherney6, para 62 {7A/6/222} and Domenjoz2, para 8 {7D/20/911}
292 Stäger 1, para 24 {7E/38/1168}
293 Domenjoz2, para 15 {7D/20/914} and Stäger 1, paras 16-17 {7E/38/1166}
294 Stäger1, para 22 {7E/38/1167} and Batkov3, para 8 {7D/13/830}
295 Stäger1, para.21 {7E/38/1167}
296 {48/1/83} - {48/1/84}
297 Stäger1, paras 29 and 48 {7E/38/1169} and {7E/38/1175}
298 Cherney6, paras 63 and 162 {7A/6/222} and {7A/6/263}

called Blofin SA for Mr Cherney.

Mr Deripaska's introduction to Syndikus

161. The Court will have to determine a dispute of fact relating to the circumstances in which Mr Deripaska came to be introduced to Syndikus.

162. Mr Cherney's evidence is that he arranged for Mr Deripaska to meet with both Syndikus and Mr Karam in around 1994.[299]

163. For his part, Mr Deripaska does not accept that he was introduced to Syndikus in 1994. Nor does he accept (despite the fact that, on his case, Syndikus conspired with Mr Cherney to act in breach of their fiduciary duties owed to him) that Mr Cherney was responsible for the introduction. In summary, Mr Deripaska's evidence is that:

    1) In 1994, he started to employ the services of Anne Z'Graggen at Fides Trust, having been advised to do so by a Swiss banker called Rejane Crusado.[300]

    2) However, in mid-1995, he became concerned that Ms Z'Graggen had not been able to optimise the tax position of his company, Alpro SA.[301] He therefore spoke to Mr Karam who, according to Mr Deripaska, was already working for his business. Indeed, Mr Deripaska says that it is possible that Mr Karam had been working for his business for several months before he met him.

    3) Mr Karam recommended Syndikus to him and, whilst he agreed to use them, this was by no means a significant decision: he "*did not care who to work with*" and "*other fiduciaries could easily have been found*".[302] He cannot recall precisely how he became a client of Syndikus, but states that this may been done by Mr Karklin "*as a result of a sophisticated intrigue staged by Mr Cherney*".[303]

    4) Thus on Mr Deripaska's account he met Mr Karam for the first time after July 1995 and at some stage thereafter Mr Karam introduced him to Syndikus.

164. These matters – that is to say both the question as to what the supposed "*sophisticated intrigue*" might be (so sophisticated was it, that its nature and purpose remain obscure), and the straight factual question of when and how Mr Deripaska came to be introduced to Syndikus and to Mr Karam (and there are obvious difficulties for Mr Deripaska's present account presented by other

299 Cherney6, para138 {7A/6/253}
300 Deripaska3, para 138 {8B/27/593}
301 Deripaska3, paras 319-320 {8B/27/650} - {8B/27/651}
302 Deripaska3, para 320 {8B/27/650} - {8B/27/651}
303 Deripaska3, para 326 {8B/27/652}

evidence he has given,[304] contemporaneous documents[305] and the evidence of others[306]) – will have to explored in evidence with Mr Deripaska.

DKK Development & Research Foundation

165. DKK was established by Fides Trust on behalf of Mr Deripaska on 7 December 1994.[307] Initially, the beneficiaries of DKK were Mr Deripaska, Mrs Valentina Deripaska (his mother), and Witness B.[308]

166. The evidence of both Mr Deripaska and Mr Karklin is that DKK was intended to be the holding company of all the assets and the trading companies owned by Mr Deripaska.[309] Consistent with DKK performing this role, it seems that a number of companies which held shares in Saaz were transferred into the beneficial ownership of DKK in 1995 and 1996, namely Alpro Aluminium Products Ltd (which itself owned shares in CJSC Alinvest and CJSC Kompaniya Aluminproduct),[310] Alpro SA, CC Transcyp Commodities Ltd, Gavroche Investments, Gresham Investments, Maddox Investments, Nash Investments, and Palm Trading. This is borne out by a number of documents[311] and is also broadly consistent with (1) a corporate structure chart which Mr Karklin says that he prepared in around 1996 for the benefit of Mr Deripaska's Moscow-based staff,[312] and (2) a diagram prepared by Syndikus which was sent to Mr Karklin under cover of a fax dated 15 April 1998.[313]

167. It is common ground that Syndikus took over the management of DKK from Fides Trust in December 1995.[314]

168. It is also common ground that when Radom was later established in 1997, DKK was transferred into

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304 Mr Deripaska himself sent to the Swiss authorities ahead of his interview on 17 February 2005, in which he stated that Mr Cherney had introduced him to Mr Karam in September 1994 {31B/75/760} . This is likely to have been in Paris, where there is evidence that Mr Karam was due to meet Mr Cherney, and where it is common ground that Mr Deripaska met Mr Cherney Mr Cherney's credit card statements show a number of trips to Paris, including in September 1994 {22/1/7Y} . Mr Deripaska was also staying at the Ritz Hotel in Paris from 11 to 15 September 1994: {21/1/226} . See also {48/1/45B} which suggests that Mr Karam will be meeting Mr Cherney in Paris in early September 1994.

305 As as noted in Section C above, Neoton was formed in Cyprus in December 1994 and a management resolution records that its directors at that time were Mr Cherney, Mr Makhmudov, Mr Deripaska, and Mr Karam: see {107/3/28} and {107/4/31}.

306 The Mr Deripaska's description of when he first met Syndikus is inconsistent with the evidence of Mr Kessler (Kessler1, paras 38-39 {7D/24/993} - {7D/24/994}), who thinks that he met Mr Deripaska in Vaduz in 1994. It is also inconsistent with the evidence of Mr Stäger, who states that at a meeting in Vaduz in 1994 he was told by Mr Karam that Mr Cherney was going to bring Mr Deripaska in as a partner in his business (Stäger1, para 29 {7E/38/1169}

307 See the articles of association dated 7 December 1994 {77/2/52} - {77/2/59}

308 See the by-laws dated 18 January 1995 {77/2/65} - {77/2/66}

309 Deripaska3, para 245 {8B/27/628} and Karklin1, paras 65-66 {8A/23/415} - {8A/23/416}

310 Karklin1, para 24 {8A/23/404}

311 {48C/1/960} - {48C/1/962} and {77/5/89} - {77/5/109}

312 Karklin1, para 126 {8A/23/435} - {8A/23/436}

313 {48C/1/1029}

314 {77/2/61} - {77/2/64}

its ownership.[315] There is, however, a major dispute of fact as to the events which led to this transfer.

169. On Mr Cherney's case, this transfer was entirely consistent with his understanding that all of his joint aluminium business with Mr Deripaska was to be held by Radom. Whilst he and Mr Deripaska agreed to enter into a partnership sometime earlier, it was only when Radom was first set up that Mr Cherney's interest came to be reflected in the holding structure.

170. According to Mr Deripaska, it was never his intention for DKK to be transferred to Radom and he says that, if this happened, it was without his authority.[316] In his Third Witness Statement, served on 13 December 2011, Mr Deripaska claims that it was "*only recently*" that he became aware that DKK might have been transferred into Radom.[317] As a result, no doubt, of this "recent" discovery, he went on to amend his Defence to allege (at para 23.3 of Schedule 3) that insofar as Syndikus changed the beneficiaries of the DKK from Mr Deripaska and members of his family to Radom, Syndikus thereby acted in breach of the fiduciary duties which they owed to him.

171. In fact, however, Mr Deripaska must have known at the time that Radom was established that it had become the beneficiary of DKK. In particular, on 27 June 1997 Mr Deripaska sent a fax to Mr Domenjoz asking him to issue bank references in relation to a number of entities including DKK, Bluzwed Metals, and the Hit Foundation "*in order to complete the structure agreed*".[318] The agreement referred to by Mr Deripaska must have been reached earlier in June 1997 when he, Mr Cherney, Mr Makhmudov, and Mr Karklin travelled to Vaduz to sign the documents relating to the incorporation of Radom.[319] It is highly likely that it was during that meeting that Mr Karklin provided Syndikus with a structure diagram showing (amongst other things) that the personal foundations of Mr Cherney, Mr Deripaska, and Mr Makhmudov would jointly own Radom and that DKK would be within Radom.[320]

172. Mr Cherney will submit that Mr Deripaska's claim that he did not know until recently that DKK was within Radom is flatly contradicted by a host of contemporaneous documents – for example, on 27 May 1999, Mr Domenjoz sent a fax to Mr Mishakov in which he said that Syndikus could not tell third parties that DKK belonged to Witness B because DKK was in fact directly held by Radom[321] – and the reaction of Mr Deripaska and his employees (in particular Mr Mishakov and Mr

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315 See the by-law dated 5 September 1997 at {77/2/67}

316 Deripaska3, para 374 {8B/27/665} - {8B/27/666} and Deripaska4, para 282 {8F/64/1687}

317 Deripaska3, para.326 {8B/27/652}

318 {48A/1/396}

319 Karklin1, para.124 {8A/23/435}

320 {18D/1/298}

321 {48F/1/1802} See also: the 15 April 1998 letter from Syndikus to Mr Karklin {48C/1/1027} - {48C/1/1029} ; the 24 Sugust 2001 email from Mr Domejoz to Mr Karpovich {48M/1/3484} ; the email exchange of 9/11 December 2002 between Mr Karpovich and Ms Liechti of Syndikus {48M/1/3674} ; the faxes from Syndikus to Mr Karpovich of 5 February 2003{48M/1/3690} , 7 February 2003 {48M/1/3702} and 7 November 2003 {48N/1/3773}

Karpovich) at the time to such documents – no dissent or queries were raised at the time – all of which will not only go to show that there is nothing to the allegations which Mr Deripaska is now making against Syndikus and Mr Karam, but also to corroborate Mr Cherney's evidence as to the function of Radom. These are matter too will have to be explored in cross examination with Mr Deripaska and his witnesses.

Events in the period between 1994 and 1996

Mr Cherney's delegation of authority

173. Mr Cherney's evidence is that, having introduced Mr Deripaska to Syndikus, he subsequently granted him an increasing amount of authority in relation to their joint business.[322] From Mr Cherney's perspective, the need to delegate authority to Mr Deripaska was particularly acute given that, from the middle of 1994 onwards, he was not able to enter either Switzerland or Liechtenstein.

174. It is certainly the case that Mr Deripaska frequently liaised with Syndikus on behalf of Mr Cherney. For example, on 23 October 1996 Mr Deripaska instructed Syndikus to invest certain funds which had been received from a US property investment through CCT into the Galenit Foundation, which was Mr Cherney's personal foundation.[323] Mr Domenjoz states that he certainly would have assumed that this instruction was given by Mr Deripaska with the full authority of Mr Cherney. Mr Stäger also says that, if the instruction had been given to him, he would have implemented it on the assumption that Mr Deripaska was acting on behalf of Mr Cherney.[324] Of course, and fundamentally, the fact of Mr Deripaska giving instructions in relation to investment of Mr Cherney's monies (unconnected with the aluminium business, at that) is entirely consistent with Mr Cherney's case that Mr Deripaska was his partner (and effectively business manager) and entirely inconsistent with Mr Deripaska's case that he was being subjected to an extortion racket, however sophisticated it is said to be.

175. Mr Deripaska says that, insofar as Syndikus regarded himself and Mr Cherney as partners, this might have been due to a false impression created by Mr Karam.[325] But no explanation has been offered as to what motive Mr Karam would have had to mislead Syndikus in this way. In any event, the extent of the interaction between Syndikus and Mr Deripaska and his staff makes it impossible that such a fundamental misunderstanding would not have emerged had it existed.

The UOB reports

176. Mr Coquoz of UOB prepared two reports following his visits to Russia in November 1995 and

322 Cherney6, paras.109 and 165 {7A/6/241} and {7A/6/264}
323 {48/1/204} - {48/1/206}
324 Domenjoz2 para 40 {7D/20/926} and Stäger1, para 49 {7E/38/1175}
325 Deripaska3, para 343 {8B/27/658}

December 1996:[326]

1) The first report records that Mr Coquoz met with Mr Deripaska, Alexander Bulygin (an employee of Mr Deripaska), and Mr Karam. It states that the Saaz plant was held as follows: "*60% TRANSWORLD METALS (TWM) and the 'MICHAEL CHERNEY' group. We remind you that Michael Cherney is the shareholder of our client BLONDE … The entire management is in the hands of the 'CHERNEY' group through Mr Oleg Deripaska*". The report also notes that Tradalco was shortly to be set up, and that this would be jointly owned by TWM and Bluzwed Metals, which itself was held by Mr Cherney, Mr Deripaska, and Mr Makhmudov.

2) In a similar vein, the second report records that Blonde was 100% owned by Bluzwed Metals, which itself was jointly owned by Mr Cherney, Mr Deripaska, and Mr Makhmudov. While the statement about the ownership of Blonde was almost certainly made in anticipation of a merger of Mr Cherney's copper partnership with Mr Makhmudov and Mr Cherney's aluminium partnership with Mr Deripaska, which did not in the event materialise, the common links and Mr Cherney's dominant stake in both businesses was clearly and correctly understood by Mr Coquoz.

177. These documents are very inconvenient for Mr Deripaska's case and he has to explain them away. According to him, the reports contain a number of errors.[327] He says that he suspects that much of the information was provided by Mr Karam and that Mr Karam may have been intending to create a misleading impression about his relationship with Mr Cherney. Again, what Mr Deripaska cannot explain is why Mr Karam would have done this.

178. It has already been explained above that when Mr Coquoz was interviewed by the Swiss Examining Magistrate about his 1995 visit, he confirmed that Mr Cherney was familiar with the affairs of Tradalco. In relation to the second Coquoz report, Mr Deripaska says in his Third Witness Statement that he has "*recently*" been told by Mr Coquoz that UOB obtained this information from Mr Karam and that no-one at the bank checked the report.[328] Mr Deripaska is not, however, proposing to call Mr Coquoz to give evidence.

179. More generally, it is important to emphasise that although for the purposes of this litigation Mr Deripaska seeks to portray Mr Karam as having preferred the interests of Mr Cherney, the reality was somewhat different. As already noted in Section D above, when in 1997 Mr Deripaska decided to set up certain "shadow" or "clone" companies in the BVI (namely Alucor Trading SA and Sayana Foil SA) with the intention of moving assets out of the Tradalco joint venture, it was Mr

326 {18A/1/9} - {18A/1/18} and {151/1/6R} - {151/1/6Z}
327 Deripaska3, paras 329 {8B/27/653} - {8B/27/654} and 339 {8B/27/659}
328 Deripaska3, para 339 {8B/27/657}

Karam who was primarily responsible for implementing that scheme.[329]

The establishment of the Meganetty Foundation

180. The Meganetty Foundation was established on 25 March 1996 with Mr Cherney and Mr Makhmudov as the beneficiaries.[330] As Mr Cherney explains, Meganetty became the holding entity for his copper business with Mr Makhmudov.[331]

Events in 1997 – the establishment of the Radom Foundation

181. Radom was established on 9 June 1997, with the Galenit, Cole, and Witestone Foundations as the beneficiaries.[332] These were the personal foundations of Mr Cherney, Mr Deripaska, and Mr Makhmudov respectively.

182. Mr Cherney's case is that in 1997 he and Mr Deripaska agreed that all of their joint aluminium interests should be held through Radom. According to Mr Cherney, he wanted the business to be owned by one holding company in a vertically integrated structure because he envisaged that ultimately he would either want the group to go public or he would want to sell it to a strategic investor. Mr Deripaska not only agreed to this but he also agreed to the merger of his and Mr Cherney's aluminium business with Mr Cherney's and Mr Makhmudov's copper business.[333]

183. In his evidence Mr Cherney refers to a diagram which reflects his understanding of the proposed structure of the group.[334] It seems that this diagram was created by Mr Karklin[335] and was subsequently amended (in manuscript) by Mr Domenjoz or Mr Wyss. It shows that the Galenit, Cole, and Witestone Foundations were jointly to own the Meganetty and Radom Foundations. Within the Radom Foundation, there were to be four lines of business, with the Hit Foundation, DKK, Rostar Holding, and Interpack Holding at the top of each line. Within the Hit Foundation were: Pecano Establishment, Alpro SA, and Bluzwed Metals. Within DKK were Gavroche, Gresham, Maddox, Palm and (by virtue of a manuscript addition) CCT.

184. For his part, Mr Deripaska accepts that Radom was established in 1997 against the background of merger discussions which he says he was having at the time with Mr Makhmudov. He says, however, that he was forced to accept the proposal to establish Radom against his will because Mr Cherney, who had started claiming that he was entitled to a share in Mr Makhmudov's copper

329 See e.g.: {48A/1/499} ; {48B/1/524} : {48B/1/528} ; {48B/1/558} - {48B/1/559} ; {48B/1/562} ; and {48H/1/2136}
330 {103/1/1} – {103/1/9}, {103/1/11} , {103/1/13} - {103/1/16}
331 Cherney6, para 289 {7A/6/317}
332 {117/1/1} - {117/1/4}
333 Cherney6, para 290 {7A/6/317}
334 {18E/1/298}
335 Karklin1, para 122 {8A/23/434}

business in early 1997,[336] was insistent. Although Mr Deripaska did not want to go into business with Mr Cherney, he was "*caught in a very difficult position*" in which he had "*no option but to go along with what he wanted*" because he was "*not then ready for confrontation with him*".[337] Leaving aside the other evidence as to their partnership, Mr Deripaska's alleged reluctance to go into business with Mr Cherney in 1997 is difficult to reconcile with the fact that they had been both directors of Neoton from December 1994 until March 1997.

185. The first by-law of Radom, dated 5 September 1997, records the beneficial ownership of Radom as being split between the Cole Foundation (50%) and the Galenit and Witestone Foundations (25% each).[338] Mr Deripaska seeks to rely upon these shareholdings as evidence of the fact that Mr Cherney was a partner in the Mr Makhmudov's copper business but not in Mr Deripaska's aluminium business.[339] In fact, however, Mr Cherney explains that insofar as Mr Makhmudov (through the Witestone Foundation) initially held a 25% interest in Radom, he held this as a nominee for Mr Cherney: it was intended that if the merger was successful then Mr Makhmudov would in due course be granted a stake in Radom for his own benefit.[340]

186. In the event, the proposed merger between the aluminium and copper businesses was abandoned. As a result, Mr Makhmudov agreed to withdraw from Radom: see the declaration dated 31 October 1997.[341] This much is common ground.

187. However, Mr Deripaska's case is that thereafter the function of Radom changed. In particular, it became "*another part of the mechanism by which Mr Cherney and others operated the* krysha *over my business and sought to obtain payments out of and power over my business, to conceal the true purpose of payments related to such and other type of their activities, and to legitimise their activities … Radom became a vehicle through which Mr Cherney and others received some 'protection payments' … It was used as window dressing to provide the appearance of a commercial rationale for payments to be made to Mr Cherney and others*".[342] According to Mr Deripaska, insofar as any of "his" companies were transferred into Radom, this was as a result of the *krysha*.[343] A curiosity of Mr Deripaska's *ex post facto* explanation is that none of the alleged *dolya* payments was either to or from Radom – see Schedules 4A and 4B to the Amended Defence.

188. In fact, however, the documents show that (a) Mr Cherney's interest in Radom stemmed not from a

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336 Mr Deripaska's evidence that Mr Cherney only started to claim an interest in the copper interest and Blonde should be noted. It is Mr Deripaska's own case that Mr Cherney was a beneficial owner of and controlled Blonde from its foundation. There is no obvious reason, therefore, why Mr Cherney would only start to claim an interest in 1997, nor why Mr Deripaska would not have known of Mr Cherney's interest from his first interaction with Blonde in 1994.

337 Deripaska3, para 364 {8B/27/663} ; see also Karklin1, para 116 {8A/23/432} - {8A/23/433}

338 {117/2/83}

339 Deripaska3, para 364 {8B/27/663} ; see also Karklin1, para 116 {8A/23/432} - {8A/23/433}

340 Cherney6, para 292 {7A/6/318} and Cherney8, paras 73 and 76 {7C/8/642} and {7C/8/643}

341 {117/2/73}

342 Deripaska3, paras 368-370 {8B/27/664}

343 Deripaska3, para 374 {8B/27/665} - {8B/27/666}

krysha arrangement but rather from his partnership with Mr Deripaska and (b) Radom was not merely a vehicle for money transfers, let alone *dolya* payments, but rather acted as the holding entity for a large group of companies which owned aluminium assets.

189. Some of the most probative documents were produced from 1999 onwards and are referred to below; however, for present purposes, it is sufficient to refer to two important documents from late 1997.

190. Between 9 and 12 November 1997, which is shortly after the proposed merger between the aluminium and copper businesses was abandoned, Mr Domenjoz and Mr Stäger travelled to Russia. During their trip – which Mr Deripaska helped to organise[344] – they visited the Saaz plant, a copper plant in Yekaterinburg, and the Rostar aluminium can factory in Dmitrov. Their report of the visit records (amongst other things) that:

    1) Mr Cherney, Mr Deripaska, and Mr Makhmudov jointly owned approximately 51% of the Saaz plant.[345]

    2) On 12 November 1997, Mr Domenjoz and Mr Stäger had dinner with Mr Makhmudov. He told them that he was partners with both Mr Cherney and Mr Deripaska and that they were considering floating their group of companies on the stock exchange. This is consistent with Mr Cherney's evidence (set out above) as to why Radom was originally established.

    3) Syndikus "*asked IM to come and visit Syndikus together with partners MC and OD during December / January 98 in order to reorganise the structure. IM will attempt to influence the other two to take this step*".

191. This is another contemporaneous document which directly contradicts Mr Deripaska's case. Once again, therefore, Mr Deripaska is forced to argue that he does not know who provided the relevant information to Syndikus and that their report is wrong in various respects, including as to the ownership of the Saaz plant.[346] However, what Mr Deripaska is unable to explain is why anyone would have provided incorrect information to Syndikus. Moreover, Mr Deripaska's purported explanation that "*Mr Cherney was always trying to present himself as a legitimate businessman*" singularly fails to explain why Mr Makhmudov would have referred to himself as being partner with both Mr Cherney and Mr Deripaska.

192. On 1 December 1997, Mr Karklin spoke to Syndikus and informed them that the Radom group was investing with Ukranian partners in an aluminium factory in Nikolaev, Ukraine.[347] The Syndikus

344 See e.g.: {48B/1/526} ; {48B/1/530} - {48B/1/533} ; and {48B/1/540} - {48B/1/541}
345 {48B/1/582} - {48B/1/585}
346 Deripaska3, para 389 {8B/27/670} - {8B/27/671}
347 {48B/1/644}

note of the conversation records that Mr Karklin requested them to establish a new foundation for the Ukrainian partners and to incorporate two Luxembourg companies. According to Mr Karklin, the new foundation and Sosta Invest Establishment (an entity already within the Radom group) would own 50% each of the Luxembourg companies which would directly participate in the aluminium factory. Further, the note records that the capital for the new foundation was to be made available to Syndikus by the Radom group. This directly contradicts Mr Deripaska's evidence that he never knew of any legitimate business being conducted through Radom.

Events in 1998 – the position of Mr Makhmudov and the introduction of Mr Popov and Mr Malevsky to Radom

193. Insofar as they concern the ownership of Radom, the Syndikus documents from April and May 1998 are very important in two respects.

194. First, the documents show that notwithstanding his purported withdrawal from Radom in October 1997, Mr Makhmudov ultimately remained a shareholder. This is common ground, albeit that the parties provide different explanations for Mr Makhmudov's involvement. Mr Cherney says that sometime after October 1997 he had a change of heart and decided that he wanted Mr Makhmudov to retain a stake in Radom as a nominee in order to represent his interests.[348] Mr Deripaska's evidence is that "*Mr Cherney was chopping and changing, and probably using Mr Makhmudov's name to play down his own involvement*".[349] Of course, this begs the question – the answer to which has not hitherto been provided – to whom was he supposedly seeking to downplay his involvement?

195. Secondly, the documents show that Mr Popov and Mr Malevsky were introduced as minority partners into Radom. This is evidenced by a number of documents, but most clearly by the formation contract for Radom dated 9 April 1998[350] and a declaration dated 18 May 1998 provided by Mr Deripaska to Syndikus in which he confirmed that the ownership of Radom was as follows: Mr Cherney (30%), Mr Deripaska (40%), Mr Makhmudov, Andrei Malevsky (on behalf of his brother) and Mr Popov (10% each).[351] The interests of Andrei Malevsky and Mr Popov were held through Mineral Resources Russia Ltd and the Antilabe Foundation respectively.

196. Whilst it is common ground that Mr Popov and Mr Malevsky were introduced as minority partners into Radom in 1998, there is a dispute of fact as to whether Mr Cherney or Mr Deripaska was responsible for their introduction.

197. Mr Cherney's evidence is that it was Mr Deripaska who recommended them.[352] Although Mr

348 Cherney6, para 293 {7A/6/318}
349 Deripaska3, para 383 {8B/27/669}
350 {117/1/21} - {117/1/24}
351 {117/2/82}
352 Cherney6, paras.296-299 {7A/6/320} - {7A/6/322}

Cherney accepts that he knew both Mr Popov and Mr Malevsky before Mr Deripaska, he says that by 1998 Mr Deripaska was at least as close to Mr Malevsky as he was and was closer to Mr Popov than he had ever been.[353] Whilst Mr Cherney was reluctant to cede some of his share in the business, he was forced to agree because Mr Deripaska had already put the proposal to Mr Malevsky and Mr Popov and they had already agreed. In the circumstances, Mr Cherney did not want to risk losing two friends and jeopardising his joint business with Mr Deripaska. Having considered the "cash registers", Mr Cherney recognises that it is possible that Mr Malevsky and Mr Popov had effectively become partners in the aluminium business even before their partnership in Radom was formalised, although he does not recollect being told about this.[354]

198. For his part, Mr Deripaska claims that Mr Cherney imposed Mr Malevsky and Mr Popov upon him as part of the *krysha*.[355] These matters will be explored in cross-examination, but Mr Deripaska's links with Mr Malevsky and Mr Popov are addressed in further detail in Section I below.

LLC Aluminproduct

199. As already explained, Mr Cherney's contemporaneous understanding was that all of the aluminium interests which he owned jointly with Mr Deripaska would be held through Radom and Mr Cherney believed that this had been brought into effect.

200. In fact, it now seems that certain aluminium assets were held outside the Radom structure. In particular, a company called LLC Aluminproduct was incorporated in August 1997[356] and it subsequently came to hold a substantial stake in the Saaz plant: for example, as at 31 March 1998 it owned 17.88%.[357] It also owned 99% of Group Sibirsky Aluminium, the company which became Company Basic Element at the end of 2001.[358]

201. Mr Karklin explains that he incorporated LLC Aluminproduct upon Mr Deripaska's instructions, and that it was intended to provide a Russian structure which would operate in parallel to Radom.[359] Certainly, this would explain why:

    1) LLC Aluminproduct was incorporated at around the same time as Radom.

    2) The ownership structure of LLC Aluminproduct at the time it was incorporated was the same as that of Radom, i.e. 50% was held by Mr Deripaska and 25% was held by each of Mr Cherney and Mr Makhmudov. In the case of LLC Aluminproduct, nominee shareholders

353 After all, all three of them were living in Moscow, and Mr Cherney was in Israel.
354 Cherney8, para.62 {7C/8/639}
355 Deripaska3, paras 32 {8B/27/565} and 382 {8B/27/668} - {8B/27/669}
356 {60/2/32} - {60/2/34}
357 {38A/1/328} - {38A/1/329} ; see also Karklin1, para 144 {8A/23/440}
358 {151D/1/1214A}
359 Karklin1, para 141 {8A/23/440}

were used: 50% was held by LLC Aktsia (a company held by Mr Deripaska's mother) and 25% was held by each of LLC Company Marka (a company held by Mr Cherney's wife)[360] and LLC AMG-2 (a company held by Mr Makhmudov's uncle).[361]

3) The ownership structure of LLC Aluminproduct changed in November 1997 to reflect the fact that in October 1997 Mr Makhmudov had withdrawn from Radom. In particular, all of the 25% share of Aluminproduct that was being held by LLC AMG-2 was transferred to LLC Company Marka (i.e. Mr Cherney's wife) which then held 50% of Aluminproduct.

202. Both Mr Karklin and Mr Deripaska contend that the aluminium shares that were acquired by LLC Aluminproduct were for the benefit of Mr Deripaska only.[362] However, the involvement of Mr Cherney's wife and Mr Makhmudov's uncle as nominees presents a significant difficulty for Mr Deripaska's case:

1) The first thing to note is the involvement of Mr Cherney (via his wife) was the result of the deliberate and, on Mr Deripaska's case, unprompted acts of Mr Deripaska and his staff. There is no room for his claim that this was Mr Cherney "inveigling" himself in Mr Deripaska's affairs or suborning Syndikus to breach fiduciary duties owed to Mr Deripaska. The "inveigling" was all that of Mr Deripaska and the actors were his subordinates.

2) Mr Deripaska's purported explanation is that "*the nominal involvement of persons and entities connected to Michael Cherney might have given us some protection against attack by TWG*".[363] This makes no sense at all, especially in circumstances where Mr Deripaska is now alleging that Mr Cherney imposed a *krysha* upon TWG. Nor does this explain why a company held by Mr Makhmudov's uncle held 25% of Aluminproduct, and why in 1997 this interest was transferred to LLC Company Marka. The more credible explanation is that LLC Aluminproduct, like Radom, was an asset holding structure that belonged to the partnership between Mr Cherney and Mr Deripaska (with Mr Makhmudov initially holding a stake as nominee for Mr Cherney).

203. The evidence appears to show that in 1999 the aluminium assets held by LLC Aluminproduct were transferred to OOO SA Holding.[364] This company was owned by LLC Company Marka (held by Mr Cherney's wife) as to 50% and by LLC Aktsia (held by Mr Deripaska's mother) as to 50%.[365] This company subsequently came to hold 50% of the shares in Saaz and, together with a number of

360 {46B//446M} ; {46/56/246}
361 {60/1/7}
362 Deripaska3, para 352 {8B/27/660} ; Karklin1, para 141 {8A/23/440}
363 Deripaska3, para 352 {8B/27/660}
364 Karklin1, para 146 {8A/23/442}
365 {46A/71/316} and {46A/86/403} - {46A/86/404}.

entities within Radom, was a co-owner of Sibal when that company was incorporated in 1999.[366]

Events in 1999 – the restructuring of the Radom group and the creation of Sibal

204. In late 1998/early 1999 there was a major restructuring of the aluminium business. According to Mr Cherney, factors such as the Russian taxation regime in relation to the Liechtenstein jurisdiction led Mr Deripaska to suggest that they should change the structure of their joint business.[367] Mr Stäger says that he understood that the partners wanted to bring their business onshore so that it was seen to be respectable and paying taxes.[368]

205. The discussions and communications which took place in relation to the restructuring provide further evidence that (a) Mr Cherney and Mr Deripaska were in partnership and (b) a number of aluminium companies were held within Radom.

206. For example, in December 1998 Mr Deripaska and Mr Mishakov (who took over the role of Mr Karklin at about this time) sought some initial advice from Syndikus in relation to tax and corporate structures. One of the issues which they asked about in correspondence was how to preserve the confidentiality of the "*beneficiaries/owners/shareholders*".[369] For this purpose, Mr Deripaska, Mr Mishakov, and Witness B attended a meeting in Vaduz on 14 December 1998. At that meeting Mr Mishakov was introduced as the new lawyer from the group with power to give instructions in relation to "*all the companies in Radom group*".[370]

207. In February 1999, Mr Domenjoz sent a fax to Mr Deripaska explaining that Syndikus did not have enough information to provide the advice which Mr Deripaska had requested at the December meeting. Mr Domenjoz therefore suggested a meeting of the "*major five holders of the group*" to discuss the restructuring:[371]

> "*We think that it would be necessary, before going into details and restructuring the entire group, that the major five holders of the group as well people like Mr Mishakov, Joseph Karam, ourselves and others up to your decision, should come together for at least one or two days, for a brainstorming meeting in a quiet place, in view to put into place the mark stones of a group structure. Thereby it should be find out where the holder of the group wants to go with it for the next decade, which appearance the group should has in the public, and what are in general the aims of the investors. After this once has been put into place, the primary scheme decide about the structure of the group could be decided*".

208. Mr Mishakov claims that he did not understand whom Mr Domenjoz was referring to as the "*the*

366 Batkov1, para 11(c)(i). See also the Information Prospectus of Sayanski Aluminiev Zavod produced in 1999 showing SA K Holding as having a 50% shareholding, and LLC Company Mark owning 50% of that company: {46C/144/704}
367 Cherney6, para 300 {7A/6/322}
368 Stäger1, para 51 {7E/38/176}
369 {48E/1/1389}
370 {48E/1/1399} - {48E/1/1400}
371 {48E/1/1548} - {48E/1/1549}

major five holders of the group" but that he did not feel any need to ask Mr Deripaska about this.[372] The Court may consider this to be incredible, and that the meaning of the reference to the '*five holders of the group*' was obvious and would have been obvious to, and understood by, Mr Mishakov. This will have to be raised with Mr Mishakov. In any event, on 15 February 1999 Mr Mishakov informed Syndikus that the new structure had been finalised. Significantly, the subject of the note which records that conversation is "*Radom Group*".[373]

209. This was followed by a fax from Mr Deripaska to Mr Domenjoz on 4 March 1999 in which he asked Syndikus to implement various instructions "*in accordance with the new foreign holding structure scheme*".[374] This fax should be read in full since it confirms that Mr Deripaska knew that a number of aluminium companies were held within Radom. For example, Mr Deripaska stated that the shares of Alumer Holding SA (Luxembourg) and Ingotal Holding SA (Luxembourg) should be transferred to Radom. Mr Deripaska also referred to the fact that the shares of Rostar Holding SA (Luxembourg) were held by Radom.

210. In his evidence in these proceedings, Mr Mishakov says that on 15 or 16 April 1999, he was told by Mr Domenjoz "*off the record*" that Mr Cherney, Mr Makhmudov, Mr Malevsky, and Mr Popov were involved as beneficiaries in Radom.[375] The Court will have to determine whether any such conversation took place. It is certainly difficult to understand why Mr Domenjoz would have considered it necessary to speak to Mr Mishakov "*off the record*". The likelihood therefore is that this is an *ex post facto* attempt by Mr Mishakov to explain why, when he later received numerous communications from Syndikus referring to the fact that Radom had five beneficiaries, he never queried this.

The Paris meeting

211. The meeting of the Radom group's shareholders, as suggested by Mr Domenjoz, took place in Paris on 23 April 1999. In particular, this meeting was attended by Mr Cherney, Mr Deripaska, Mr Popov, Mr Karam, Mr Stäger, Mr Domenjoz, Mr Grashnov, and Mr Nekrich (who acted as an interpreter). Mr Malevsky did not attend.

212. In advance of the meeting Syndikus prepared a document identifying the issues they wished to resolve at the meeting, which various items for discussion including "*Who owns what (with percentages)*" and "*how to protect the interests of partners*".[376] The note of the meeting, produced by Syndikus,[377] records that a decision was made to structure the aluminium business into four lines

372 Mishakov1, para 28 {8A/20/353}
373 {18B/1/76}
374 {18B/1/80} - {18B/1/82}
375 Mishakov1, para 31 {8A/20/354}
376 Domenjoz2, para 50 {7D/20/931} ; Stäger1, para 53 {7E/38/1177} ; {18B/1/83} - {18B/1/84}
377 As to this, see: Domenjoz2, paras 51-54 {7D/20/931} - {7D/20/933} ; Stäger1, paras 51-56 {7E/38/1176} - {7E/38/1179} ; Stäger 2, para 23 (where he repeats the point that the note of the meeting was prepared by

under one parent company incorporated in Luxembourg, namely Alincor SA. The four lines were to be as follows:

1) Rostar Holding SA, holding Rostar, a Russian company producing aluminium cans.

2) Altechnology Invest Holdings SA, holding Benet Invest & Trade and the offshore tolling companies.

3) Almetaltrade Holding SA, holding the onshore trading companies in the UK, Germany, USA, China and Cyprus.

4) Intermetal Investment Holding SA, holding ownership in 10 aluminium plants in Russia which were all to be merged into Sibal within a year. Thus all the plants which were already held within Radom would be owned by Sibal.

213. According to Mr Cherney, following the meeting he left Mr Deripaska to implement the restructuring which they had agreed and he always understood from Mr Deripaska that it had indeed been implemented.[378] Significantly, there is a diagram that must have been produced in the context of the restructuring which shows Alincor SA at the top of the structure and at the bottom of the page there are manuscript references to Mr Cherney, Mr Deripaska, Mr Makhmudov, Witness B and Mr Mishakov.[379]

214. Notwithstanding the considerable amount of documentary evidence which indicates that the restructuring was discussed at the Paris meeting, Mr Deripaska denies this.[380] First he questions whether the meeting took place at all and then he says that if it did indeed take place then it certainly was not a substantive restructuring meeting. In support of this, Mr Deripaska says that he would not have wanted to discuss his business affairs in front of Mr Grashnov and Mr Nekrich. But both were well known to Mr Deripaska.[381] By this time not only were Mr Deripaska and Mr Nekrich already joint beneficial owners of a company called Garratt Investments[382] but they were also partners in a coal company called Kru Trade SA. There is therefore nothing surprising about Mr Deripaska discussing the restructuring in the presence of Mr Nekrich.

215. Indeed, the importance of the Paris meeting is evidenced by the very fact that Mr Cherney and Mr

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Syndikus for their own internal purposes only, and '*simply records our understanding of what we were told at the time*') {7E/39/1199} ; paragraph 28 of Mr Domenjoz's draft third statement, at page 237 of the exhibit to Ms Fidler's statement {156/2/273}

378 Cherney 6, para 301 {7A/6/323}

379 {27/3/69}

380 Deripaska3, para 397 {8B/27/672}

381 Mr Deripaska goes so far as to say that he had "*not bad relations*" with Mr Grashnov: Deripaska4, para 221 {8F/64/1672} . The true nature of those relations can perhaps be seen from the photograph at {24/1/36} of Mr Cherney and Mr Deripaska in South Africa with Mr Grashnov.

382 {86/1/1} - {86/1/4}

Deripaska both attended; they only ever met Syndikus together on a small number of occasions, for example when Radom was first established.[383]

Implementation of the restructuring plan

216. On 26 April 1999, Mr Deripaska sent a letter to Syndikus concerning the implementation of the restructuring plan.[384] The timing of the letter strongly indicates that Mr Cherney's account of what was discussed at the Paris meeting on 23 April 1999 is correct.

217. The 26 April letter was prepared by Mr Mishakov[385] and attached to it was a note that had also been prepared by Mr Mishakov. The note makes clear that the shares in Alincor SA were to be held initially by one beneficiary but would later be transferred "*to the shareholders of Radom*".

218. Over the remainder of 1999, a large body of documentation was created within Syndikus – faxes, meeting notes, file notes, formation contracts, etc. These documents will repay careful study, and will undoubtedly be the subject of significant focus at trial. Taken together, they constitute a substantial body of evidence in support of Mr Cherney's case, confirming that Radom held a number of entities which owned aluminium assets, including Sibal when that was incorporated in July 1999, and that Mr Cherney was in partnership with Mr Deripaska.[386]

Events in 2000 and beyond – the liquidation of entities controlled by Syndikus

219. In 2000, the Sibal-Sibneft merger took place, leading to the creation of Rusal. But even after this merger Syndikus recorded a conversation with Mr Mishakov and Witness B about Sibal under the heading "*Radom Foundation*".[387]

220. Also from late 2000 onwards, Mr Deripaska (acting primarily through Mr Mishakov) started to take steps to liquidate entities within the control of Syndikus. In their communications about this, Mr Mishakov and Syndikus implicitly acknowledged on a number of occasions that Mr Cherney was a

383 Stäger2, para23 {7E/39/1198} ; Karklin2, para 37 {8G/66/1974}

384 {18B/1/89} - {18B/1/94}

385 Mishakov1, para 36 {8A/20/355}

386 See for example: Mr Domenjoz's fax to Mr Mishakov of 27 May 1999 {18B/1/97} ; Mr Domenjoz's fax to Mr Mishakov of 11 June 1999 {48F/1/1862} ; the note of Mr Karam's call with Mr Domenjoz on 14 June 1999 {48F/1/1871} ; the fax exchange between Mr Mishakov and Mr Domenjoz on 22/26 June 1999 {48G/1/1908} - {48G/1/1910} & {48G/1/1941} - {48G/1/1942} ; the Syndikus note of a meeting with Mr Mishakov on 5 July 1999 {48G/1/1968} ; Mr Mishakov's fax to Mr Domenjoz of 14 July 1999 {18B/1/109} - {18B/1/110} ; the formation contracts from July 1999 at {77/1/6} - {77/1/9} and {94/1/13} - {94/1/16} ; the Syndikus note of a meeting with Mr Mishakov on 5 November 1999 {18B/1/111} ; the Syndikus note of a meeting with Mr Mishakov on 24 November 1999 {48I/1/2425} - {48I/1/2428} ; and, the Syndikus note of a meeting with Mr Mishakov, Witness B, Mr Karpovich and Mr Rogov on 2 June 2000 {18B/1/119} - {18B/1/121}

387 {18B/1/134} That Syndikus were quite clear, at this time, that Mr Deripaska and Mr Makhmudov were Mr Cherney's parters in their respective spheres, with Mr Cherney being the 'big boss' is apparent from a telephone conversation in August 2000 between Tony Wyss and Elena Skir that was recorded by the Israeli police on a wiretap : {29/4/172A} - {29/4/172M}

partner in the business held by Radom. These will have to explored in evidence, but for example:

1) On 14 February 2001, Mr Mishakov sent a fax to Mr Domenjoz in which he requested that, as regards a number of entities (including Radom, DKK, and the Hit Foundation), Syndikus should not provide information about the beneficiaries to the LGT bank.[388] On 16 February 2001, Syndikus replied stating that they could not choose what information to give to the banks:[389]

> "*The entire group (except Pontianac and some other companies, which do not belong to the group (Sayana Foil SA / Alucor Trading SA)) belongs to 5 different foundations or companies, and ultimately to 5 physical persons to various percentages.*
>
> *As long as we have not been informed by all 5 owners jointly, that there are some changes in the ownership, you will certainly understand that we will not breach the law by giving wrong information to the banks*".

This document – which was created shortly before the 10 March 2001 meeting at the Lanesborough Hotel between Mr Cherney and Mr Deripaska – shows that Mr Cherney had an interest in "*the entire group*". Significantly, Syndikus also stated in the fax that they had sent a copy of their refusal to "*one of the principals*": it is clear that this was a reference to Mr Cherney because the evidence shows that their fax was sent to Ms Skir.[390]

2) On 9 August 2001, Mr Mishakov sent a fax to Mr Domenjoz instructing him to liquidate a number of entities including Radom, DKK, and the Hit Foundation.[391] On 10 August 2001, Syndikus replied as follows: "*As you know Radom Foundation is held by five different parties and we need a letter from each party giving us the order and authorisation to liquidate Radom Foundation. Further, Radom is holding DKK, Hit and Siberian and the foundation can only be terminated when the subsidiaries themselves have been closed down*".[392] The fax from Syndikus also states in relation to the Cole Foundation that this is "*the private pot of OD, and has a stake in Radom Foundation as well as in Krutrade SA, together with other partners*".

3) On 16 December 2002, Karin Liechti of Syndikus sent a fax to Mr Karpovich which stated as follows under the subject of "*Sibirsky Aluminium GmbH*": "*As far as we are informed, OD, IM, and MC are also the bo's [beneficial owners] of above company, if not please advise us accordingly*".[393] There is no evidence to suggest that Mr Karpovich ever responded, an omission which is somewhat surprising given the case that Mr Deripaska is now running.

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388 {48L/1/3330}
389 {48L/1/3339}
390 {18C/1/200} - {18C/1/201} and {48L/1/3338}
391 {48M/1/3473} - {48M/1/3474}
392 {48M/1/3476} - {48M/1/3477}
393 {48M/1/3677}

221. On 19 February 2003, Mr Deripaska sent a fax to Mr Domenjoz stating that: "I, *Mr Oleg V Deripaska, as one of the beneficiaries of Radom Foundation, Liechtenstein instruct you to liquidate the above company*".[394]

222. On 7 November 2003, Ms Liechti sent a fax to Mr Karpovich stating that in order to liquidate Radom and DKK, Syndikus needed "*instructions from all beneficiaries*".[395]

223. In the event, Radom was liquidated on 1 March 2004. By that time, all the asset-holding entities that had previously been held within the Radom structure had been transferred to other jurisdictions as part of the restructuring.[396] Significantly, Radom was liquidated without the knowledge or consent of Mr Cherney:[397]

394 {48M/1/3708}
395 {48N/1/3773}
396 Domenjoz2, para 71 {7D/20/942}
397 Cherney6, para 320 {7A/6/331}

I. THE ALLEGED *KRYSHA* ARRANGEMENT AND *DOLYA* PAYMENTS

224. Mr Deripaska's essential objection to this claim is that the relationship under which any agreement was concluded with Mr Cherney was a relationship in which Mr Deripaska was the victim of an extortion racket imposed upon him by Mr Cherney and others.

225. Mr Deripaska's position is stated in stark terms at paragraphs 2.3 and 8 of the Amended Defence:[398]

> "*Mr Deripaska never had any business relationship with Mr Cherney. The only relationship between [Mr. Cherney and Mr. Deripaska] was the krysha arrangement explained below… Mr Deripaska and Mr Cherney did not at any time have a business relationship; from 1995, Mr Deripaska had been subject to a krysha arrangement with organised crime groups ('OCGs') represented by Mr Cherney, Mr Anton Malevsky and Mr Sergei Popov under which he had been forced to pay them substantial sums as 'dolya' … Mr Deripaska was forced to enter into the aforesaid krysha arrangements with Mr Cherney, Mr Malevsky and Mr Popov…*".

226. Mr Deripaska's case thus leaves no room for ambiguity: Mr Deripaska's only relationship with Mr Cherney was one in which Mr Deripaska was the victim of a criminal protection racket in which Mr Malevsky and Mr Popov were active participants.

227. The position adopted by Mr Deripaska is not true; it is a position that he has adopted in an attempt to avoid his obligations to Mr Cherney. Mr Cherney was not Mr Deripaska's *krysha*; he was his partner. That this was the case is apparent from the contemporaneous evidence reviewed throughout these opening submissions. In this section, particular focus is put on: (a) the body of evidence showing an amicable and cooperative business/social relationship between Mr Deripaska and the alleged extortionists, from which Mr Deripaska derived substantial benefits; and (b) the nature and circumstances of the payments alleged by Mr Deripaska to have been made by way of *dolya*. This evidence must also be seen through the prism of the shifting nature of the case advanced by Mr Deripaska; the credibility of his account is yet further undermined by the manner in which his case, in relation to matters which, if true, could reasonably be expected to be matters that were firmly fixed in his mind and memory, has repeatedly changed and developed over the course of the present proceedings. These three points, which must be borne in mind when considering the credibility of Mr Deripaska's case, are addressed in turn.

The shifting nature of Mr Deripaska's case

228. It is Mr Deripaska's position that he was in the habit of keeping detailed records of *dolya* payments made,[399] and that he recalls his perception (at the time) of the various alleged criminals who consorted with Mr Cherney leading Mr Deripaska to perceive a serious threat to the well-being of

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398 {2/4/18} ; {2/4/21}

399 Deripaska3, paras 404-410 {8B/27/674} - {8B/27/675}

himself and his associates.[400] It is, however, a remarkable feature of Mr Deripaska's case that Mr Deripaska was apparently unable to recall those matters at the early stages of this claim and, indeed, until very recently. Mr Deripaska's case has shifted and developed dramatically during the course of these proceedings. Mr Cherney will submit that the changing nature of Mr Deripaska's case is indicative of an attempt by Mr Deripaska to re-write the events leading up to the March 2001 agreement for the purpose of establishing a legal defence and/or otherwise to discredit Mr Cherney by making unfounded allegations of criminality.

229. The references to the pleadings and evidence reflecting Mr Deripaska's changing case, in relation to the *krysha* allegations, allegations of criminality, and the alleged *dolya* payments are set out in Annex 1 to these submissions. The features of Mr Deripaska's changing case on *krysha* include the following:

1) In his first evidence in these proceedings (his jurisdiction statement),[401] Mr Deripaska did <u>not</u> allege that he perceived any threat from Mr Cherney or Mr Malevsky and did <u>not</u> allege that Mr Cherney or Mr Malevsky made any demands for payment from Mr Deripaska – matters which would be fundamental to a defence dependent upon duress. Rather, Mr Deripaska's evidence was that he perceived a threat from third parties for which he required protection from Mr Cherney and Mr Malevsky. Mr Deripaska made no mention whatsoever of Mr Popov in his first statement.

2) In his original Defence (22 March 2010), Mr Deripaska made no allegation of a single threat or demand having been made of him by Mr Cherney, Mr Malevsky or anyone else and continued to refrain from mentioning Mr Popov.

3) In his Further Information of 16 August 2010, Mr Deripaska: (a) refused to provide particulars of any threat or use of force against him (b) stated that for the purposes of these proceedings he was relying <u>only</u> upon the involvement of Mr Cherney, Mr Malevsky and Mr Popov in relation to his case on *krysha*, and (c) stated that he could not recall who Mr Cherney's associates were who played a role in the alleged *krysha* arrangement.[402]

4) Since that Further Information, Mr Deripaska's case has developed and expanded, culminating in Mr Deripaska's Amended Defence of 12 March 2012 and his Fourth Witness Statement of 4 May 2012. In that statement, Mr Deripaska provided (for the first time) details of specific conversations alleged to have taken place with Mr Cherney and Mr Malevsky which are now relied upon as evidence of a threat which Mr Deripaska perceived. In addition,

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400 Mr Deripaska's latest evidence is that he recalls specific conversations in relation to alleged criminals. By way of example, at Deripaska4, paras 67 {8F/64/1628} and 174 {8F/64/1660} , Mr Deripaska recalls specific conversations in which Mr Cherney referred to, respectively, Mr Tokhtakhounov, and Mr Abduvaliev.

401 {8/2/4}

402 {2/6/99} ; {2/6/102} - {2/6/103}

Mr Deripaska has recently made a litany of allegations of criminal relationships between Mr Cherney and various individuals which Mr Deripaska says he perceived at the time, notwithstanding his apparent inability to recall those matters in August 2010.

5) Despite the layers of detail which have recently been added in Mr Deripaska's supplemental witness statement, any evidence of direct threats or demands from Mr Cherney (or anyone purporting to act on his behalf) remains extremely thin. This is notwithstanding that, on Mr Deripaska's case, Mr Deripaska was compelled by duress to make in excess of 50 separate payments totalling over half a billion dollars over the course of 7 years, to participate in a huge number of personal, social and business meetings and to invest in and participate in the management of several businesses, all against his will.

Evidence of the relationship between Mr Deripaska and alleged extortionists

230. Mr Deripaska's case on *krysha* is beset by two key evidential difficulties: (a) Mr Deripaska's own witnesses are unable to provide any direct evidence to corroborate Mr Deripaska's case in relation to his relationship with Mr Cherney and (b) Mr Deripaska's own evidence, together with a large body of independent contemporaneous documentary evidence positively demonstrates a cooperative business and social relationship between Mr Deripaska and those individuals now alleged to have extorted money from him

231. It is against that background of evidential difficulties that Mr Deripaska has attempted (on no fewer than three occasions) to adduce expert "*krysha* evidence" with the aim of supporting his case on *krysha* by way of hypothetical, academic evidence about *krysha* in general. Those applications, however, were (rightly) rejected by the Court.

Mr Deripaska's witnesses fail to support the alleged *krysha*

232. The evidence of Mr Deripaska's own witnesses (including his closest aides) is that Mr Deripaska never mentioned any *krysha* relationship with Mr Cherney (or anyone else). Their evidence, at its highest, is that they now infer that the relationship was one of *krysha*.[403]

233. Consistent with the above, Mr Deripaska's own evidence is that he never discussed with others his relationship with Mr Cherney because he wished to keep it private and considered that it would be damaging to his interests if the true nature of his relationship with Mr Cherney became known.[404]

234. It is, to put it at its lowest, surprising that:

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403 First witness statement of Witness C, paras 101-102 {8D/33/1116} ; Karklin1, para 64 {8A/23/415} ; First witness statement of Witness B, para 42 {8D/32/1044} ; First witness statement of Witness A, para 101 {8D/31/979}

404 Deripaska3, paras 324 {8B/27/652} , 330 {8B/27/654} , and 342 {8B/27/657}

1) Mr Deripaska was content to be seen in public enjoying close relations with those who are now alleged to be notorious criminals (see below), without explaining that relationship to at least those who were close to him (it was apparently less "damaging" to have been seen in a cooperative relationship with OCG representatives than a reluctant one).

2) Mr Deripaska was unwilling to tell even his trusted confidants (including his personal lawyers) the basis on which payments were being made for the benefit of Mr Cherney.

3) Mr Deripaska was nevertheless happy to state explicitly to Mr Abramovich – on whose cooperation Mr Deripaska was dependent for the Sibal/Sibneft merger – that he was the subject of an ongoing extortion by Mr Cherney pursuant to which Mr Deripaska would need to make a "large payment" (presumably a reference to US$250 million in Agreement No 1) shortly before the merger (i.e. not matters which would make Mr Deripaska an attractive proposition for a prospective business partner).[405]

235. It will be Mr Cherney's case that Mr Deripaska's witnesses (save for Mr Abramovich) have adduced no direct evidence (beyond *ex post facto* supposition) as to the alleged *krysha* relationship which existed between Mr Deripaska and Mr Cherney because they could not honestly give evidence that suggested that Mr Deripaska was the subject of a *krysha* arrangement.

Evidence of Mr Deripaska's relationship with the alleged extortionists

236. This Section analyses the evidence of the relationship between Mr Deripaska and the three individuals relied upon by Mr Deripaska as playing the leading role in the alleged scheme of extortion of which he was the victim: Mr Cherney, Mr Malevsky and Mr Popov.

237. In order to avoid duplication within these written submissions, the evidence in relation to Mr Deripaska's relationship with Mr Cherney is dealt with only in brief summary in the following paragraphs as such evidence is considered in greater detail elsewhere in the specific contexts in which it arises (e.g. Mr Deripaska's partnership with Mr Cherney and the interaction they both had with Syndikus).

Mr Deripaska's relationship with Mr Malevsky and Mr Popov

238. Mr Deripaska alleges that Mr Malevsky and Mr Popov (along with Mr Cherney) played the leading role in extorting money from Mr Deripaska over the course of several years.

239. An immediate difficulty with Mr Deripaska's case is that the contemporaneous documents together with his own evidence clearly show a genuine business and social relationship between Mr Deripaska on the one hand and Messrs Malevsky and Popov on the other which is inconsistent with

405 Abramovich1, para 10 {8/10/219}

a relationship of extortion. For example:

1) Throughout the time in which he alleges he was subjected to the *krysha*, Mr Deripaska is shown both in photographs and videos socialising with Mr Popov and Mr Malevsky and, indeed, other individuals now alleged to be serious criminals who played a part in the alleged extortion.[406]

2) Mr Deripaska met with Mr Malevsky "*on a number of occasions in various countries from about 1995 onwards until Mr Malevsky's death in 2001*".[407]

3) Mr Deripaska "*had a number of meetings and interactions with Mr Popov over time*" in various countries throughout the period in which he was alleged to have been victimised and beyond.[408] On 18 April 2012, Mr Deripaska disclosed for the first time several electronic diary entries showing meetings with Mr Popov throughout 2005 (four years after the termination of the alleged *krysha*).

4) Mr Deripaska was involved in substantial transactions with entities owned or controlled by Mr Malevsky which included the receipt, by an entity controlled by Mr Deripaska, of US$12 million from Trenton and the payment of sums by Mr Deripaska to Mr Malevsky which are not pleaded as *dolya*.[409]

5) Mr Deripaska engaged in substantial business dealings with Mr Popov. Those dealings involved Mr Deripaska providing financial and accounting assistance to Mr Popov's business,[410] the receipt of substantial sums by Mr Deripaska from entities controlled by Mr Popov,[411] the payment of substantial sums by Mr Deripaska to Mr Popov which are not

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406 For example, Mr Deripaska is shown in an apparently relaxed social environment with Mr Malevsky and/or Mr Popov at the following events: the birthday celebrations of Mr Malevsky's daughter in August 1997, at which Mr Abduvaliev attended (Malevskaya2, para 7 {7E/27/1020}); Ms Rina Cherney's wedding in April 1998; and the birthday celebrations of Mr Lalakin in 2006 (Popov1, para 62 {7E/34/1145}), who Mr Deripaska now alleges was a leader of the Podolskaya OCG. Surprisingly, no mention of the latter event is made in any of Mr Deripaska's witness statements.

407 Deripaska4, para 264 {8F/64/1683} On Mr Deripaska's own evidence and undisputed documents, this includes (at least) the following: April 1995 (Israel), May 1995 (Cyprus) {21/1/2} , January 1995 (Cyprus), mid-1997, April 1998 (Israel), and February/March 2001 (Russia): see Deripaska3, paras 292 {8B/27/643} and 468 {8B/27/689} and Deripaska4, para 302 {8F/64/1692}

408 Deripaska4, para 350 (8F/64/1703} - {8F/64/1704} . On Mr Deripaska's own evidence and undisputed documents, this includes (at least) the following: Summer 1994 (Paris or Geneva), Summer 1995; socialising in Moscow from late 1996; celebrations hosted by SaAZ in 2004 and 2005; and various visits by Mr Popov to Mr Deripaska's current and former house and visits by Mr Deripaska to Mr Popov's house: see Deripaska3, para 379 {8B/27/667} and Deripaska4, paras 340 {8F/64/1701} , 346 {8F/64/1703} , 420 {8F/64/1720} , and 423 {8F/64/1721}

409 This includes a payment of US$3,000,000 from Benet to Trenton on 3 February 1999 {64B/13/660} - {64B/13/663}

410 First witness statement of Witness B, para 41 {8D/32/1044}

411 For example, on 26 March 1996, Nash Investments (controlled by Mr Deripaska) received US$3,499,985 from Prival {47F/100A/1575A}

pleaded as *krysha* payments[412] and the participation by Mr Deripaska in joint business with Mr Popov in the fashion, food, and construction industries:[413]

a) The position in relation to the **Yudashkin** fashion business and the **Soyuzcontract** food business is addressed below.

b) **Glovmosstroy** and **Mosoblzhilstroy** (construction): Mr Deripaska has been coy about his involvement with Mr Popov in the construction industry, no doubt because such involvement extended several years beyond the termination of his alleged *krysha* relationship with Mr Popov. Whilst Mr Deripaska has not sought to deny his joint business ventures with Mr Popov in the construction industry, he insinuates that any such involvement was pursuant to an ongoing threat posed by Mr Popov.[414] In fact, Mr Deripaska's disclosure includes a written agreement of mutual cooperation dated 22 December 2006 which is signed by Witness A and Mr Popov relating to a housing development undertaken by ZAO Mosoblzhilstroy.[415] Witness A's supplemental statement also acknowledges a role played by Mr Popov in the acquisition by Mr Deripaska of Glovmosstroy.[416]

6) On 18 April 2012, Mr Deripaska disclosed for the first time, schedules of payments to Yudashkin, to Mr Popov's office and Mr Popov in person, which were in the character of business expenses and have not been pleaded as *dolya* payments.[417] Moreover, insofar as loans were made to Mr Popov, at least some such loans were repaid.[418]

7) Mr Deripaska signed documents which acknowledged the beneficial interest of Mr Malevsky and Mr Popov in the Radom Foundation.[419]

8) Mr Deripaska provided assistance to Mr Malevksy's son both after the termination of the alleged *krysha* and after Mr Malevsky's death.[420]

9) Mr Popov is the godfather of Mr Deripaska's daughter, a relationship which is understood to

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412 These include a payment of over US$2million from Nash to Prival on 17 June 1997 {47F/114/1624} and payments of over US$1 million from Bluzwed Metals to Soyuzcontract on 28 August 1997 {69B/23/752A} .

413 Deripaska4, para 350 {8F/64/1704}

414 Deripaska4, paras 417 {8F/64/1720} and 431- 433 {8F/64/1723}

415 According to the website for the development, the project is worth in the order of US$1billion (http://lands-sale.com/rubric/complex/831) {135B/1/674A} ; see also {135B/1/649A}

416 Second witness statement of Witness A, para 72 {8H/68/2073}

417 See e.g. {47/44/223}

418 For example, Mr Deripaska's internal accounting documents shows that in 1997 Mr Popov's office repaid a loan of US$2,000,000 in full together with interest in the sum of US$150,000 {47/44/221}

419 {18B/1/50}

420 First witness statement of Witness A, para. 116 {8D/1/985} . This crucial fact forms part of the evidence of one of Mr Deripaska's principal witnesses but, remarkably, is not mentioned at all in Mr Deripaska's own evidence.

carry particular significance in Russian culture.[421]

10) Mr Deripaska developed "*quite a cordial relationship*" with Mr Popov from 2002/2003 (i.e. well after the termination of the *krysha*).[422]

11) In 1998, on his return to Russia, Mr Malevsky stayed in a property owned by Mr Deripaska (or, on Mr Deripaska's case, one of Mr Deripaska's relatives) which was close to Mr Deripaska's principal residence for at least two months.[423]

240. The full extent of Mr Deripaska's relationships with Mr Malevsky and Mr Popov has only emerged very recently in Mr Deripaska's evidence. Furthermore, Mr Deripaska has previously sought to conceal those relationships. For example:

1) On 17 February 2005, Mr Deripaska told the Swiss Investigating Magistrate that: "*I know this person [Mr Malevsky] by name. I have seen his name in the press*".[424] That was plainly a lie and cannot be justified, as Mr Deripaska may now suggest, by a fear of Mr Malevsky (who had died some 3 and a half years earlier).

2) On 12 May 2010, Mr Deripaska told the Moscow Court during the course of his testimony (during which Mr Deripaska was under the threat of criminal liability for perjury) that he had not seen Mr Popov since 2005.[425] It is now clear from Mr Deripaska's own evidence that he saw Mr Popov on several occasions after 2005 including as recently as at least February 2008.[426]

Mr Deripaska's relationship with Mr Cherney

241. The evidence of Mr Deripaska's relationship with Mr Cherney, if anything, presents even greater difficulties for Mr Deripaska's case on *krysha*. In brief summary, the features of that relationship include the following:

1) Mr Cherney's company, Republic Establishment, serviced multiple credit card accounts on behalf of Mr Deripaska which Mr Deripaska did not shirk from making heavy use of from

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421 Deripaska4, para 420 {8F/64/1720}

422 Deripaska4, paras 424-425 {8F/64/1721} - {8F/64/1722} . Mr Deripaska concedes that this *"might appear quite strange"*. Of course, the evidence of Mr Popov and Mr Cherney is that Mr Popov and Mr Deripaska became close friends from much earlier on.

423 Deripaska4, paras 393-394 {8F/64/1714} . Janna Malevskaya, Mr Malevsky's widow, recalls the arrangement lasting for '*about a six month period*' during which time she was '*constantly seeing Mr Deripaska, at least three times a week*': Malevskaya2, para 9 {7E/27/1021}

424 {31B/77/815A}

425 {34A/26A/528A} - {34A/26A/528I}

426 Second witness statement of Witness A, paras 67-69 {8H/68/2071} - {8H/68/2072} ; Deripaska4, para 428 {8F/64/1722}

1997[427] and continued to use those accounts after the termination of the purported *krysha*.[428] Mr Deripaska's account was used to meet his regular expenditure, which included the financing of Mr Deripaska's American Express credit card(s). Furthermore, Mr Deripaska was authorised to, and did, give instructions to arrange for that account to be financed by transferring sums from Mr Cherney's entities.[429]

2) Mr Cherney provided Mr Deripaska with multiple mobile telephone accounts which were also fully subsidised by Mr Cherney by way of further Republic Establishment Septo accounts set up on behalf of Mr Deripaska:[430] Septo GSMOD (the last two letters referring to Mr Deripaska[431]); Septo GSM05; and Septo GSM06. Mr Deripaska was in the habit of running up bills in the hundreds of dollars each month by his use of those phones.[432]

3) Mr Cherney paid for various expenses on behalf of Mr Deripaska in addition to those provided for by the Republic Establishment credit cards. Those expenses included air travel and hotels[433] and the costs associated with the administration of Mr Deripaska's entities.[434]

4) Mr Deripaska employed Syndikus to manage his own interests throughout notwithstanding that Syndikus had a pre-existing relationship with Mr Cherney (as set out in Section H above).

5) Mr Cherney explicitly gave directions to Syndikus conferring on Mr Deripaska control over his interests.

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427 Mr Deripaska now accepts that he was provided with a credit card by Republic Establishment (Deripaska4, para.514 {8F/64/1743}) which, on Mr Deripaska's case, is a company owned by Mr Cherney (see, for example, Prevezer3, para.65 {151C/1/819}). Statements showing Mr Deripaska's use of the card include those at {118B/3/683} and {118B/3/731} and {118C/3/785} , {118C/3/796} , {118C/3/829} , {118C/3/833} , and {118C/3/838} . The statement at {118C/3/785} appears to show payments of over US$700,000 in the first six months of 1997.

428 For example, a statement of 30 January 2003 shows Mr Deripaska making use of his GSMOD account in early 2002: {118C/3/927}

429 {72B/11/574}

430 Documents relating to the establishment of those accounts may be found at {118G/11/2003} - {118G/11/2093} . It appears that there were three such phones provided to Mr Deripaska: {118G/11/2001} {118G/11/2042} , and {118G/11/2067}

431 The only three account-holders to have account names designated by their initials were Mr Cherney, Mr Deripaska and Mr Makhmudov (i.e. Mr Cherney and his principal business partners) who, respectively held accounts: GSMMC, GSMIM and GSMOD: {118C/4/989} - {118C/4/990}

432 Various bank statements relating to the payment for Mr Deripaska's telephones are at {118H/13/2367} - {118H/13/2445} and {118J/19/2877} & {118J/19/2879} - {118J/20/3029}. Various itemised bills are at {118L/26/3520} - {118L/26/3677} and {118O/31/4206} - {118O/31/4408} and {118O/32/4413} – {118O/32/4501}

433 See e.g.: {21/1/18} ; {21/1/66} ; {21/1/70} ; {21/1/85} ; {21/1/88} ; {21/1/99} ; {21/1/106} ; {21/1/130} ; {21/1/133} ; and, {21/1/159} . In addition, Mr Cherney's assistant, Ms Skir made applications for entry visas on Mr Deripaska's behalf: {29/3/101} - {29/3/102}

434 For example, Furlan Anstalt (owned by Mr Cherney) paid expenses on behalf of the Cole Foundation (owned by Mr Deripaska): {48/1/144} ; {84B/8/774} - {84B/8/783} ; {48/1/141} - {48/1/144} ; {111B/6/770}

6) Loans that were made by Mr Deripaska to Mr Cherney were repaid.[435]

7) Mr Deripaska's private accounting documents acknowledge the receipt by him (or his entities) of substantial sums from Mr Cherney's entities. Other documents also show that Mr Cherney made contributions amounting to many millions of dollars over several years to Mr Deripaska, or from which Mr Deripaska benefited (see Section E above).

8) Mr Deripaska was invited to, and attended, Mr Cherney's daughter's wedding in April 1998.

9) Mr Deripaska accepts that he attended numerous meeting around the world with Mr Cherney, which included meetings (on Mr Cherney's case, but which Mr Deripaska has not sought to deny) with Mr Deripaska's girlfriends and mother.[436]

10) Mr Deripaska is shown in several photographs and videos apparently enjoying Mr Cherney's company at various events spread out over the course of their relationship.

242. In order to accommodate the above evidence into his case, Mr Deripaska has suggested that his relationships with Mr Cherney, Mr Malevsky and Mr Popov were not what they seemed, but formed part of a "*sophisticated*" krysha. In order to reinforce the point, Mr Deripaska asserts that his apparent relationship and interaction with alleged OCG leaders was "*not all surprising*". On any view, when the totality of the evidence is considered, Mr Deripaska's explanation is nonsensical: extortion which involves, *inter alia*, the payment of substantial sums by the extortionist to the victim is plainly not extortion at all, whether "sophisticated" or otherwise.

The true nature of the *dolya* payments

243. The development of Mr Deripaska's case on *dolya* has been every bit as dramatic as that of his case in relation *krysha* and allegations of criminality (see Appendix 4). That development is consistent with Mr Cherney's contention that such payments have been re-characterised as *dolya* after the event when they were in truth no such thing.

244. The Court will note that the figure of circa $115 million now advanced as the total sum paid by way of *dolya* prior to March 2001[437] compares with the figures of *"approximately $50 million"* and $93,678,522.31 advanced in Mr Deripaska's further information of, respectively, 16 August 2010 and 21 October 2010[438]. Moreover, even on the basis of Mr Deripaska's revised figure it is striking that that sum – the cumulative total paid during the entirety of the *krysha* relationship from 1995-2001 – represented less than half the sum Mr Deripaska alleges was necessary to buy-off his

435 For example, Mr Deripaska's internal accounting documents show that Mr Cherney repaid in full a loan in the sum of US$3,797,409 in 1997 {47/44/221} .
436 {8F/64/1617}
437 {2/4/44BE}
438 {2/6/100} and {2/8/210}

extortionists (circa $423 million) following the Agreement of March 2001.

245. In this written opening, the Claimant has necessarily set out the position on the alleged *dolya* payments at a level of generality. When those payments are examined in detail, as they will be in the course of the trial, the case will prove to be every bit as incredible and manufactured as it appears on first acquaintance. However there are certain entities or arrangements which feature in the *dolya* case which it may be helpful to introduce at this stage.

Alleged *dolya* payments during the course of the alleged *krysha* relationship

Yudashkin

246. 14 of the 47 *dolya* payments originally pleaded are payments made in September 1998 on behalf of "Marka Investments". In responding to these payments, it is Mr Cherney's evidence that Mr Popov and Mr Deripaska were into business together by investing in the business of Valentin Yudashkin, a Russian fashion designer of some celebrity, and that Mr Cherney and Mr Makhmudov later invested in that business.[439] Mr Cherney has also served evidence from Mr Sergey Efros, who says that he was asked by Mr Deripaska to take over the management of that investment in 1997 and who confirms that Mr Popov, Mr Deripaska and Mr Cherney were all partners in the business,[440] and that the various alleged *dolya* payments were "*almost certainly payments to suppliers of the Yudashkin fashion business*".[441] Mr Popov in his witness statement states that he, Mr Deripaska, Mr Cherney and Mr Makhmudov invested in Yudashkin together.[442] Dmitry Buriak, a businessman who was a manager of the Yudashkin project over the period 1998 to 1999, gives evidence to similar effect.[443] Roberto Piona, a business colleague of Mr Buriak who helped him in his time as manager, identified a number of these alleged *dolya* payments as payments to Yudashkin suppliers.[444]

247. The position now advanced by Mr Deripaska, that he was forced to become involved in the Yudashkin fashion business and to pay money to it as part of a *krysha* will be explored in evidence. For present purposes, the Court is asked to note: (a) the appointment of Mr Sergei Sarkisyan as general director of Yudashkin on Mr Deripaska's recommendation and; (b) the role of Mr Deripaska's close friend, Mr Makhmudov, in the business,[445] something which makes the allegations of *dolya* in relation to the Yudashkin business particularly unlikely (Mr Makhmudov not being asserted to be part of or subject to the *krysha*).

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439 Cherney6, paras 417-424 and 448-449 {7A/6/371} - {7A/6/373} and {7A/6/383} - {7A/6/384}

440 Efros1, paras 13-16 and 25-36 {7D/21/954} - {7D/21/955} and {7D/21/958} - {7D/21/962}

441 Efros1, para 44 {7D/21/964}

442 Popov1, paras 27-28 and 57.5 {7E/34/1100} - {7E/34/1101} and {7E/34/1113}

443 Buriak1, paras 11-15 {7D/17/873} - {7D/17/875}

444 Piona1 paras 16-20 {7E/33/1087} - {7E/33/1088}

445 On Mr Makhmudov's instructions, a series of payments are made by Operator Trade Center for Yudashkin, a company owned by Mr Cherney and Mr Makhmudov: see for example {111C/6/1139} of 24 June 1998.

Soyuzcontract and Archers Trading

248. A series of *dolya* payments are alleged to have been made to Archers Trading Limited ("Archers"): payments [29], [30], and [31] to [35]. Archers was a company formed at the request of Mr Makhmudov in May 1998.[446] Mr Makhmudov's note states:

> "*Please open new company for me (Archers Trading Ltd) for US of trading foods (import/export)*".

249. Mr Cherney, Mr Makhmudov and Mr Arik Kislin were identified by Syndikus as persons authorised to give instructions for Archers.[447]

250. A Syndikus note of 16 October 1998 states that Archers purchased US poultry from the Alpine Group and sold it to a Russian food company Soyuzcontract, a company owned by Mr Cherney, Mr Deripaska, Mr Makhmudov, Mr Popov and Mr Arik Kislin.[448] A Soyuzcontract memorandum describes it as a leading Russian importer and distributor of frozen food products, with a sales volume of US$26 million monthly which underwent a change of ownership as at 1 December 1997.[449]

251. It is Mr Cherney's case that Mr Popov was involved in the Soyuzcontract business, and that Mr Deripaska asked him to invest in that business in 1997, which he, Mr Deripaska and Mr Makhmudov did.[450] Group Sibirskiy Aluminium was involved in a financing arrangement for Soyuzcontract with Inkombank in early 1998.[451] Mr Cherney believes that the payments to Archers were made in the context of the Soyuzcontract business, being part of a larger group of payments made to and by Archers, Alpine, Soyuzcontract and companies controlled by Mr Deripaska.[452] There are various invoices to Archers from Lat-Finn Agency for transportation and storage of frozen chicken,[453] as well as invoices for the purchase of frozen poultry,[454] and contracts between Alpine and entities such as Tyson Foods and Cargill.[455]

252. Mr Deripaska's case as to Archers and Soyuzcontract, like his case as to the Yudashkin fashion business, has expanded considerably (see Appendix 4). Following his initial silence on Soyuzcontract, Mr Deripaska now seeks to explain his involvement as being that of a reluctant victim. The Court will in due course be referred to Mr Deripaska's "private cash registers" which

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446 See Mr Makhmudov's fax to Syndikus of 11 May 1998 at {48D/1/1082}
447 {61/1/2}
448 {48D/1/1287} - {48D/1288}
449 {61C/8/945} The founders of Soyuzcontract gave an interview in July 2008 to Forbes magazine which sets out the history of the business: {135A/1/378A}
450 Cherney6, para 423 {7A/6/373} ; and Popov1, paras 14 and 25 {7E/34/1095} and {7E/34/1100}
451 {151/1/158} ; {151A/1/309}
452 {61A/4/331} is a list of payments made by Archers to Alpine in 1998.
453 See e.g {61C/8/949} - {61C/8/953}
454 {61C/8/956}
455 {61C/9/970}

tell a different story. Once again, Mr Makhmudov's involvement is a puzzling anomaly in Mr Deripaska's case. All Mr Deripaska currently has to say about that is "*Mr Makhmudov may have invested in Soyuzcontract – I do not know – but I did not*".[456]

Alleged *dolya* payments made pursuant to Supplement No 1

253. It is of course Mr Deripaska's case that Supplement No 1 was unrelated to Agreement No 1, but concerned a distinct arrangement to pay off Mr Malevsky in order to bring to an end the latter's imposition of a *krysha* on Mr Deripaska. That much is clear, albeit implausible for the reasons set out elsewhere. What remains mysterious and unsatisfactory is Mr Deripaska's case on the relationship between the payments referred to in Schedule 4B to the Amended Defence and the alleged arrangement with Mr Malevsky:

1) Mr Deripaska has never explained how the figure of US$173,646,426.93 – the sum "*which had been agreed with Mr Malevsky*"[457] – was derived. That figure compares with the round figure sum of US$250 million referred to in Agreement No 1 which Mr Deripaska says was to pay off Mr Cherney and does not appear to bear any relation to the value of 20% of Rusal (the consideration referred to in Supplement No 1).

2) Mr Deripaska has never properly explained how arrangements were made for the payments referred to in Schedule 4B, all of which were made after the death of their intended beneficiary, Mr Malevsky. This was not addressed at all in Mr Deripaska's Third Witness Statement and the information provided for the first time in Mr Deripaska's supplemental witness statement (at paragraphs 412-413) is noticeably vague and bereft of detail.

3) Mr Deripaska's Further Information of 21 October 2010 provided a list of 5 entities who were said to be the recipients of payments made by Mr Deripaska pursuant to the final *dolya* payment: Lonerose Holding Ltd, Zywiec Ltd, Wilfred Ventures Ltd, Pride Centre Associates Ltd, and Sharp Enterprises SA. 15 months after serving that Further Information Mr Deripaska alleged (for the first time) in his draft Amended Defence of 26 January 2012 that the recipients pleaded in his Further Information were in fact companies owned by the MDM Bank and were mere conduits for further onward payments to ultimate payees. An explanation is awaited as to: (a) why those matters, of which Mr Deripaska must have known at the time – matters which are said to have been recorded on a Finprovod database by Witness B – only came to light in 2012, (b) why Mr Deripaska chose to use MDM Bank entities for those payments and what Mr Deripaska's relationship to those MDM entities formerly pleaded as *krysha* recipients was, and (c) the basis on which it is now said that the ultimate payee entities are in fact connected to Mr Malevsky and/or other OCG

456 Deripaska4, para 373 {8F/64/1710}
457 Deripaska3, para 37 {8B/27/566}

representatives. Mr Deripaska's own close involvement with MDM Bank will also have to be considered.

4) Finally, Mr Deripaska refused to answer Mr Cherney's Request for Further Information as to the source of the payments pleaded as representing the final *dolya* payout to Mr Malevsky and others or the manner in which these payments were accounted for. That refusal is against a background in which Mr Deripaska has disclosed "private cash registers" purporting to show a business relationship with Mr Malevsky and Mr Popov in which they were paid dividends in accordance with their respective shares. Further disclosure and confirmation of what Mr Deripaska says is the extent of his own recollection of these issues was ordered by the Court on 30 May 2012.

5) Mr. Cherney's concerns as to the Finprovod database are addressed in the "Balance sheets" section.

J. ALLEGATIONS OF CRIMINALITY MADE AGAINST MR CHERNEY AND THIRD PARTIES

254. Mr Deripaska has sought to make allegations of criminality against Mr Cherney, and against third parties to these proceedings, a central aspect of this trial. In the first draft of his Amended Defence dated 26 January 2012, Mr Deripaska introduced new allegations of criminality amounting to some 59 pages in the pleading. Mr Deripaska's approach was, and remains, an attempt to divert the Court's attention from the real issues in this dispute, smearing Mr Cherney's name in the process.

255. There are three important points to note at the outset.

256. First, Mr Cherney has never been convicted of any criminal offence by any court in any jurisdiction. In addition, none of the individuals now alleged to be leaders/members/associates of OCGs relevant to Mr Deripaska's case (at paragraph 2.2 of Schedule 3 to the Amended Defence) appear ever to have been convicted (or, in the case of Mr Popov, to have had convictions upheld) in any jurisdiction.

257. Secondly, notwithstanding the serious allegations of criminality made in this case, for which Mr Deripaska contends there is credible evidence including his own testimony, Mr Deripaska has never reported any of the alleged OCG leaders or members to the police or prosecuting authorities in Russia or anywhere else.

258. Thirdly, it was an inescapable feature of business in Russia and the CIS during the 1990s that many senior businessmen, and indeed politicians, were alleged (whether in the media or by state authorities) either to be criminals themselves or to have associated with persons who were so reputed. Those rumours and allegations arose against a background in which a number of individuals – the so-called "oligarchs" – exploited the opportunities and loopholes afforded to them by the rapid privatisation of state-owned enterprises following the fall of communism, but in the absence of any proper regulatory regime. At best, it was a lawless time. It is not difficult to understand why and how the extraordinary success and wealth of businessmen involved in that process gave rise to wide-ranging allegations.

259. The extent to which prominent businessman (together with senior politicians whose relationship with such businessmen was interdependent) were subject of rumours of criminality is apparent, both from the material relied upon by Mr Deripaska in these proceedings and from documents readily available on the internet and elsewhere. One does not need to search far to find serious allegations against virtually every prominent businessman and politician in Russia and the CIS during the course of Mr Deripaska's relationship with Mr Cherney. By way of example only:

    1) The Russian website "*http://rumafia.com*", which was relied upon (and commended for its

impartiality) by Mr Deripaska's proposed expert, Professor Shelley, contains allegations and/or detailed criminal "dossiers" drawn from a wide range of sources in respect of over 800 people, including amongst others: Mr Deripaska, Mr Makhmudov, Mr Abramovich, Mr Soskovets, Mr Vekselberg, Mr Lisin, Mr Potanin, Mr Luzkhov (the former Mayor of Moscow), two current board members of Rusal (Mr Livshits and Mr Bravatnik), the current deputy CEO of commerce at Basic Element (Mr Karabut), and no less than President Putin himself.

2) A Spanish Police Report in relation to an investigation relating to the alleged role played by Vera Metallurgica SA in laundering money from Russia refers to, amongst others, the following individuals as being "*known by the International Intelligence Services for their supposed relations with criminal organizations from Eastern European Countries*": President Putin, Mr Abramovich, Mr Berezovsky, and Mr Deripaska.

260. Much of the material relied upon by Mr Deripaska consists of selective extracts from material of a similar nature to that described above. Insofar as the Court is required to evaluate the material relied upon by Mr Deripaska it will be necessary to assess that material both as a whole and in its wider context including related allegations against businessmen and politicians unconnected to these proceedings and against Mr Deripaska himself.

261. The material relied upon by Mr Deripaska which implicates him both in criminality and in the established practice of *kompromat* (the spreading of false accusations) is considered further below.

262. In considering the validity of Mr Deripaska's allegations, it is essential to bear in mind the following:

1) The issues to which the allegations relate.

2) The manner in which the allegations have developed in these proceedings.

3) The nature of the evidence relied upon in support of the allegations.

4) The relationship between Mr Deripaska and Messrs Popov and Malevsky, which continued following the termination of the alleged *krysha*.

5) The similarity in the evidence of association with alleged criminals for Mr Cherney and for Mr Makhmudov.

6) Mr Deripaska's use of *kompromat* to disseminate false information about Mr Cherney.

Relevance of the allegations to the issues

263. At its core, Mr Deripaska's Defence depends upon showing that he was the subject an extortion racket imposed upon him by Mr Cherney. It is therefore important to understand the allegations now made in the context of Mr Deripaska's evidence as to the threat which he allegedly perceived during the course of his relationship with Mr Cherney.

264. This is also the position in respect of allegations made as to the criminal repute of Mr Cherney and third parties.[458] By its Judgment of 24 February 2012, the Court ruled that allegations of repute were only permissible as pleaded issues on the following basis:[459]

> "*Insofar as Mr Deripaska believed that Mr Cherney, or a person connected with him, was or might be involved in significant criminal activity, or knew of the criminal activity of such a person, that is relevant to his contention that through fear and duress he paid Mr Cherney extortion money*".

265. It is against that background that Mr Deripaska has sought to emphasise, not the threat which he perceived at the time by alleged criminals, but rather their dealings with Mr Cherney which were unrelated to any threat posed to Mr Deripaska. For example, Mr Deripaska has recently introduced allegations that Mr Cherney made or received "unexplained" payments to or from various individuals, some of whom Mr Deripaska now alleges to be criminals (although Mr Deripaska does not suggest these individuals were not also engaged in legitimate businesses).[460] However, at the time these allegations first surfaced – in the Third Witness Statement of Ms Prevezer QC dated 1 November 2011 – those payments had not even been pleaded. Since their introduction into this case, Mr Cherney has now explained the business dealings to which those payments relate. The most substantial of the payments pleaded by Mr Deripaska relate to entities in which either Mr Malevsky or Mr Popov had an interest. Mr Cherney has explained the underlying business interests to which those payments are likely to have related.[461] Mr Deripaska (Soyuzcontract, Yudashkin) and Mr Makhmudov (TNK, Yudashkin, and Soyuzcontract) were also involved in certain of those businesses.

The way in which Mr Deripaska's case has developed

266. The quite extraordinary manner in which Mr Deripaska's case has developed is set out, by reference to Mr Deripaska's pleadings, evidence, and submissions, at Annex 1 to these submissions. The

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458 Throughout the Amended Defence Mr Deripaska has, in respect of various third parties, adopted the formula "*was (and/or was reputed to be at the material time)*" a criminal, or leader/member of an OCG as the case may be.

459 {4/4/93}

460 Mr Deripaska also suggests that the payment of travel expenses by Mr Cherney gives rise to suspicion. It should be noted, however, that a number of the individuals now alleged to be criminals had their travel paid for by Mr Deripaska's company, Alpro, at the material time {21/1/207} - {21/1/209} , {21/1/219}

461 Cherney6, paras 242, 396-399, 408-411, 416, and 420-425 {7A/6/297} , {7A/6/363} - {7A/6/364} , {7A/6/367} - {7A/6/368} , {7A/6/370} , {7A/6/372} - {7A/6/374} and Cherney8, paras 119-129 and 134-142 {7C/8/659} - {7C/8/663} , {7C/8/664} - {7C/8/667}

Claimant will contend that the shifting nature of Mr Deripaska's case is redolent of an *ex post facto* reconstruction of events based upon material which has been obtained for the purposes of these proceedings rather than a reflection of any threat which Mr Deripaska perceived at the time.[462] His case has developed as the needs of the litigation have demanded.

267. Furthermore, the allegations of criminality against Mr Cherney now made by Mr Deripaska as part of his case contrast starkly with Mr Deripaska's position on these matters prior to the commencement of these proceedings. Mr Deripaska has never reported or given evidence against Mr Cherney or any of the alleged criminals with whom it is said Mr Cherney had a connection (whether in Russia or elsewhere). Still more noteworthy is that in proceedings where it has been alleged that Mr Cherney was engaged in criminality, Mr Deripaska has positively sought to refute those allegations:

1) In the Base Metals litigation of 2002, allegations of criminality were made against both Mr Deripaska and Mr Cherney (both being said to be connected to the Izmailovskaya OCG): these included allegations now sought to be made by Mr Deripaska. A submission made on behalf of Mr Deripaska refuted all such allegations including those made against Mr Cherney with no attempt to distinguish Mr Deripaska's position from that of Mr Cherney. Such allegations were variously described as "*lurid*", "*whopping*", "*scandalous*", "*baseless*" and "*unsupported by even the most basic detail*".[463]

2) In litigation brought by TWG against Bluzwed in 2005, Mr Deripaska advanced a submission in which allegations against Mr Cherney were categorically refuted:[464]

> "*The only shown links of Mr Michael Chernoy with an organisation, whether this be a criminal one or not, are links with TWM itself and not with any criminal organisation whose existence has ever been demonstrated… as we have seen the criminal organisation, the existence of which has not as of today been proven, to which Mr Chernoy is supposed to belong has no connection whatsoever with the taking control of the Russian market in aluminium …*".

<u>The nature of the evidence relied upon in support of the allegations</u>

268. The evidential foundation for Mr Deripaska's serious allegations of criminality against Mr Cherney and third parties is extremely thin.

269. Mr Deripaska's allegations of criminality are set out in Schedule 3 to the Amended Defence which, in turn, derives from Schedule 3 of an earlier draft of that pleading dated 17 February 2012. In relation to the latter document Mr Deripaska's lawyers set out, in a comprehensive schedule, <u>all</u> the

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462 Indeed, that approach is betrayed by Mr Deripaska's Fourth Witness Statement: "***<u>With hindsight</u>**, I understand how Mr Cherney and Mr Malevsky arranged the imposition of the krysha on me …*": Deripaska4, para.32 {8F/64/1616}

463 {32/1A/43H} , {32/1B/43BQ} , {32/1C/43DC} , {32/1A/43H} , {32/1B/43BU}

464 {31B/79/843E}

material which was relied upon in support of each allegation of criminality.[465]

270. There are a number of points to note about the evidence relied upon by Mr Deripaska:

1) First, Mr Deripaska has adduced virtually no primary evidence (still less any corroborative evidence) as to any specific threat or specific criminal act carried out by or on behalf of Mr Cherney or other individuals now alleged to be criminals in the context of Mr Deripaska's relationship with Mr Cherney i.e. the issue that actually has to be determined by the Court. Mr Deripaska's own evidence is vague and non-committal.[466] In his Third Witness Statement Mr Deripaska did not even mention the following individuals, who are now alleged to be serious criminals and who are now said to have influenced Mr Deripaska's decision to make *dolya* payments: Mr Sergei Aksenov, Mr Dmitri Pavlov, Mr Alexandr Bushaev, Mr Vladimir Poliakov, and Mr Sergei Lalakin. Even in his Fourth Witness Statement which, remarkably, seeks to include numerous details about the alleged extortion for the first time, Mr Deripaska's evidence remains extremely vague.

2) Second, Mr Deripaska's approach to the material upon which he relies has been to cherry-pick passages from statements or documents which assist his case whilst inviting the Court to disregard those passages which prejudice Mr Deripaska and/or Mr Deripaska's case. Alternatively, Mr Deripaska has suggested that certain categories of document (such as police reports and journalistic articles) are reliable as against Mr Cherney but apparently not as against Mr Deripaska. This has included attempts to adduce by way of hearsay evidence parts of a statement in an article in so far as it makes allegations against Mr Cherney, but not parts of the same statement making similar allegations against Mr Deripaska and Mr Makhmudov.[467]

3) The evidence of Mr Khaidaorov – heavily relied upon Mr Deripaska during the interlocutory stages of these proceedings – is a case in point: Mr Deripaska apparently invites the Court to accept the evidence of Mr Khaidarov (himself the subject of serious allegations of criminality) as a truthful witness in respect of evidence against Mr Cherney whilst at the same time to ignore or disbelieve those parts of Mr Khaidarov's evidence which suggest that Mr Deripaska was himself a criminal, that Mr Makhmudov was a criminal and/or that Mr Deripaska and Mr Cherney were partners (Mr Khaidarov's evidence is considered further

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465 {151D/1/1175} - {151D/1/1204}

466 A more detailed account is provided, on behalf of Mr Deripaska, in Witness A's witness statement: {8D/31/945} . However, it is noteworthy that none of the "*most famous crime bosses*" and their "*gang*" which were understood to pose a threat to SaAZ (para 15 {8D/31/950}) is alleged to have had any relationship with Mr Cherney. Furthermore, Witness A does not suggest that Mr Cherney was involved in any of the alleged threats posed to either SaAZ or KrAZ. Rather, Witness A's evidence is that Mr Cherney was in a position to assist Mr Deripaska in resisting the threat posed by Mr Tatarenkov and others (at para 94 {8D/31/977}): "*[Mr Cherney] gave the impression that he had all the means to help us cope with threats, as well as to make the situations much worse, apparently, for our enemies*".

467 For criticism of this approach see *The Ikarian Reefer* [1995] 1 Lloyd's Rep 455 at 461

below). Thus, Mr Deripaska has sought to select (by highlighting) those passages upon which he relies whilst studiously seeking to exclude (by not highlighting) any reference to himself. This has been taken to absurd lengths to the extent that words or sentences within paragraphs of Mr Khaidarov's relied upon by Mr Deripaska have been removed/de-highlighted – examples of this taken from Mr Deripaska's hearsay notice of 25 May 2012 in relation to statements of Mr Khaidarov are contained in Annex 4.[468] Mr Deripaska thus seeks to present a slanted – and ultimately misleading – impression of the evidence.

4) Mr Deripaska's approach is wrong as a matter both of principle and authority.[469] Mr Cherney will contend that no weight should be attached to material which Mr Deripaska seeks to deploy selectively in the manner described above.

5) Third (and closely related to the preceding point), much of the highly selective material relied upon by Mr Deripaska (whether admissible or inadmissible) implicates Mr Deripaska himself in serious criminality, at least as much as Mr Cherney.[470] Three examples serve to demonstrate this:

   a) The Stuttgart Court judgment upon which Mr Deripaska seeks to rely as against Mr Cherney included the following statement:[471]

      "… Izmaylovskaya, acting in the background, became active when Michael Chernoy and his partners, Iskander Makhmoudov and Oleg Deripaska, wanted to take control of enterprises".

   b) Mr Djalol Khaidarov, whose evidence Mr Deripaska relies heavily on, has given evidence and/or made statements to prosecutors in Israel, the USA, and Russia to the effect that: (i) Mr Deripaska was involved in bribing a governor in the Kemerovo region, Mr Tuleyev, in order to secure the takeover of NkAZ; (ii) Mr Deripaska had procured false criminal proceedings to be instituted against Mr Khaidarov; (iii) Mr Deripaska was a member of an OCG; (iv) Mr Deripaska ordered the murder of Mr Vadim Yafyasov in 1995; (v) Mr Deripaska was involved in the illegal takeover of the NkAZ factory owned by the Zhivilo brothers; and (vi) Mr Deripaska would have

468 {9B/15/541} ; {9B/15/542} ; {9B/15/548}

469 In *McPhilemy v Times Newspapers (No. 2)* [2000] 1 WLR 1732, the Court of Appeal considered a case where a party wanted to put in statements from another witness under the Civil Evidence Act, parts of which were contrary to its own case and which it intended to suggest to the jury were dishonest. Brooke LJ held at 1740: "*I know of no principle of the law of evidence by which a party may put in evidence a written statement of a witness knowing that his evidence conflicts to a substantial degree with the case he is seeking to place before the jury, on the basis that he will say straight away in the witness's absence that the jury should disbelieve as untrue a substantial part of that evidence*".

470 The evidence relied upon, as against Mr Cherney, also implicates Mr Makhmudov in criminality to at least the same extent. As already explained, however, Mr Makhmudov is accepted by Mr Deripaska to be a legitimate businessman and indeed a friend and business associate of Mr Deripaska throughout the material time.

471 {149B/1/654} . The witness evidence of Mr Khaidarov, both in the Stuttgart proceedings and elsewhere, in fact corroborates certain key aspects of Mr Cherney's evidence and of the relationship between Mr Cherney and Mr Deripaska.

arranged for Mr Khaidorov to be assassinated had the latter told the police of the illegal takeover of the Zhivilo brothers' factory. As to the latter, Mr Khaidarov's evidence to the Israeli Police in 2001 was that:[472]

"*If I had [told the police], the same generals from the F.S.B., Kolchin, the head of the security services of Iskender and Deripaska, as well as the other general whose family name I do not know, would have heard about it in 5 minutes and I would not return home from my work the following day. People like Deripaska and Iskender own a very strong operational and analytical system in which they employ ex-workers of the interior ministry and the F.S.B. who constantly receive all kinds of information from the security authorities. They would immediately kill me and I would understand that*".

c) A purported Interpol Report from the Bulgarian National Security Directorate, which is relied upon by Mr Deripaska in these proceedings, includes the following statement:[473]

"*According to Interpol Moscow, it is suspected that at the early stages of mutual activity of Cherny and Deripaska in Sayanogorsk they used the crime group of Tatarenkov Vladimir, known as Tatarin, for a 'krysha' … there is some information that the murders of some of the members of Tatarin's group in Karkasia following the conflict between Tatarin and Deripaska had been planned by Oleg Deripaska … There are serious suspicions that Mikhail Cherny is a member of an organised crime group that probably also include Oleg Deripaska, Iskander Makhmudov …*".

6) Indeed, Mr Deripaska was so concerned by the evidence of his own criminality that he sought to place restrictions on the disclosure of that evidence within these proceedings. The Defendant's skeleton argument dated 11 December 2011 stated that: [474]

"*… on 15 November 2011, the Central Investigative Court No. 4 of Madrid issued a request to the criminal authorities in Russia to initiate criminal proceedings against D in connection with a number of alleged crimes committed by D, including money laundering and participation in a criminal organisation … In the light of this development, there is a real risk that, if and to the extent that the witness statements served on D's behalf (including his own) were referred to in open court or otherwise disclosed by C, the Russian criminal authorities will seek to use this material against D in the Russian criminal proceedings …*'.

271. Finally, such of the underlying source material relied upon by Mr Deripaska, in which allegations of criminality are made against Mr Cherney and others, is so far removed from primary evidence as to be of no (or negligible) evidential value. A large part of such evidence consists of multiple hearsay emanating from unidentified sources and, as such, is incapable of verification.[475] For that reason alone (quite apart from the points made above), the Court should be slow to attach any weight to that material.

272. Further, a significant portion of the material relied upon is inadmissible on the basis that it infringes

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472 {29C/5/1100F}

473 {36D/19/1152}

474 {6B/12/588}

475 For example, the affidavit of Mr McNulty in the Stuttgart proceedings {36/3/70} refers to unidentified informants; and the statement of Mr McCausland {142A/5/533} does not identify the names of any of his sources.

the rule in *Hollington v Hewthorn* [1943] KB 587 and/or that it constitutes non-expert opinion evidence. The Court has previously heard the Claimant's submissions in relation to this, which are not repeated here.[476] However, insofar as Mr Deripaska persists in relying upon such evidence, the Court will be invited to rule on its admissibility. This is not a technical objection but one which reflects the fact that unless the evidence relied upon by another court as the basis for a judgment can be examined, and its weight assessed, it is impossible for this court asked to reach a conclusion on that basis of what another court has concluded to determine what weight to attach to the other judgment.[477]

Mr Deripaska's relationship with Mr Malevsky and Mr Popov

273. Mr Cherney has already explained in Section I above the close social and business relationship which Mr Deripaska enjoyed with Mr Malevsky and Mr Popov – the individuals now alleged by Mr Deripaska to have been OCG ringleaders.

Similarities in the evidence relating to Mr Makhmudov

274. Mr Deripaska has sought to implicate Mr Cherney in criminality by suggesting that inferences may be drawn from Mr Cherney's contact with those who Mr Deripaska alleges to be criminals. Mr Deripaska has explained his own dealings with such people on the basis of duress pursuant to the alleged *krysha* arrangement with Mr Cherney and others.[478] However, no explanation has been offered as to why Mr Makhmudov should have met and conducted business with those who Mr Deripaska now alleges to be serious career criminals.

275. The following matters, which are relied upon as against Mr Cherney as the indicia of serious criminality, would seem to apply equally as against Mr Makhmudov:

1) Mr Makhmudov enjoyed both a close personal relationship and a business relationship with both supposed OCG figures. For example, Mr Popov (together with Mr Deripaska) attended Mr Makhmudov's wedding.[479] As for business, both Mr Malevsky and Mr Makhmudov were involved in Kru Trade SA in 1999, which operated in the coal business,[480] for example, and Mr Makhmudov was involved with Mr Popov in both Yudashkin and Soyuzcontract.[481]

2) Mr Makhmudov authorised payments to Trenton, the alleged Izmailovskaya OCG war

476 The Court is invited to refer to paragraphs 50-88 of the Claimant's Skeleton Argument dated 9 February 2012 {6B/13/689} - {6B/13/702}

477 *Ferrexpo v Gilson Investments* [2012] EWHC 721 (Comm) at [51]

478 See e.g. Deripaska3, para.381{8B/27/667} : *"Of course I did what I could to present a friendly face to these [alleged criminals] and I never refused to meet them or reject any minor services they occasionally tried to render me. Social relationships and interactions were important to them, they were part of the krysha ritual, and I had to comply to keep them happy*".

479 Popov1, para 9.2 {7E/34/1093} ; Deripaska4, para 418 {8F/64/1720}

480 {99/1/7} ; {99/1/16} - {99/1/17}

481 See paragraphs 246-252 above, and the documents referred to there

chest,[482] and the Meganetty Foundation made payments to ICC (which has been suggested by Mr Deripaska's lawyers to be a front for organised crime).[483]

3) Mr Makhmudov, not only held a Septo account at Republic Establishment, but also took responsibility for the administration of Republic Establishment credit cards. It will be recalled that Mr Deripaska alleges that Republic Establishment was used as means of making payments to alleged criminals.

4) Mr Makhmudov attended meetings with Mr Cherney and Mr Malevsky and travelled at various times both with Mr Popov and Mr Malevsky.[484]

5) Mr Cherney's companies arranged and paid for the travel of Mr Makhmudov on various occasions.[485]

6) Mr Makhmudov is the subject of very similar criminal allegations to Mr Cherney, and much of the material relied upon by Mr Deripaska as against Mr Cherney equally implicates Mr Makhmudov. By way of example:

   a) The testimony of Mr Khaidarov before the Stuttgart Court and elsewhere alleges that Mr Makhmudov was involved in murder and was associated with Izmailovskaya.

   b) The Bulgarian Interpol Report alleged that Mr Makhmudov was a member of an organized crime group in Russia and was involved in money laundering.

276. It follows from Mr Deripaska's case that either: (a) Mr Makhmudov is himself a criminal or a person who Mr Deripaska perceived to be a criminal or (b) Mr Makhmudov's dealings with those who Mr Deripaska alleges to be criminals, and unsubstantiated allegations made about Mr Makhmudov, do not detract in any way from the fact that Mr Makhmudov was a legitimate and honest businessman. The former is not open to Mr Deripaska in view of Mr Deripaska's evidence as to his own relationship with Mr Makhmudov. The latter must apply equally to Mr Cherney.

Mr Deripaska's use of *kompromat*: Mirepco

277. The allegations of criminality now made by Mr Deripaska must be viewed against a background in which Mr Deripaska has been shown to have orchestrated a campaign for the purpose of spreading false information about Mr Cherney in an attempt to smear him. That campaign (which resembles

482 See the payment from Hiler Establishment of 14 May 1996 {92A/9/441} and the payment from Operator Trade Center of 30 July 1998 {111B/6/834}

483 Prevezer3, para.125 {151C/1/840} Though as to the true nature of ICC, which was a Syndikus service company, see Stäger2, para 14 {7E/39/1194}

484 See e.g. their trips to Italy in November and December 1997: {21/1/65} and {21/1/77}

485 See e.g. {21/1/13} , {21/1/24} , {21/1/27} , {21/1/65} , {21/1/67} , {21/1/76} , {21/1/85} , {21/1/93} , {21/1/99} , {21/1/121} , {21/1/125} , and {21/1/145}

similar such campaigns instigated by Mr Deripaska)[486] was instituted shortly after the commencement of these proceedings and was calculated to prejudice Mr Cherney in this litigation. For that purpose, Mr Berkovitz (who was retained as a consultant by Mr Deripaska's company, Basic Element) used his public relations firm, Mirepco.

278. The documents before the Court at the jurisdictional stages in these proceedings led the Court of Appeal to conclude:[487]

> "*The Mirepco documents showed that Mr Deripaska was capable of making allegations to denigrate Mr Cherney, and the judge thus reached this conclusion at paragraph 201:-*
>
> > *'It seems to me that there is a significant likelihood of Mr Cherney being prosecuted if he returns and a real possibility that Mr Deripaska might use his influence, or his ability to orchestrate feeling against Mr Cherney, to encourage the authorities to take that course … There is reason to suppose that Mr Deripaska or his advisers have already conceived a plan to denigrate Mr Cherney in this country (see paragraph 249 below) and in Israel (see paragraph 153 above); and there appears to be far more scope for such a plan and for a prosecution in Russia. Further there is a distinct possibility that any charges would be trumped up*".

279. In summary, the relevant documents show that:[488]

1) Following the commencement of Mr Cherney's claim, persons employed by Mr Deripaska engaged a public relations firm, Mirepco, to disseminate false information about Mr Cherney in order to prejudice him in this litigation under a project entitled "*Re MC*".

2) In parallel to this, a group in Israel headed by Mr Eskin (who was later convicted of illegally wire-tapping Mr Cherney's private telephone), was apparently on a monthly retainer of US$25,000 for the purpose of "muddying" the reputation of Mr Cherney and others.

3) Meetings were arranged between Bryan Cave (Mr Deripaska's solicitors), Mirepco, and Mr Eskin at the offices of Bryan Cave in May 2007. Those meetings were attended by lawyers acting for Mr Deripaska at the time.

4) Substantial sums were paid by or on behalf of Mr Deripaska in order to influence media publication including the "buying off" of the editor of *Vesti* newspaper.

5) Those acting for Mr Deripaska suggested it would be possible to procure (in the absence of

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486 Mr Deripaska's previous attempts to smear rivals with false allegations are referred to in the article at {135A/1/257A} A document entitled "Project K" was authored by Mr Deripaska and dated 30 December 1999. In that document, Mr Deripaska conceived of a plan to carry out a series of unlawful steps including initiating false criminal proceedings and the use of local and national media to institute a PR campaign designed to "*destroy our competitors*" by alleging that *"The [Achinsk] plant's management is committing a crime against the state*" {151/1/134} - {151/1/157}

487 [2009] EWCA Civ 849 at [37] {4/2/77}

488 {35/1/173} - {35/1/259}

any proper basis) a judgment against Mr Cherney in Russia.

280. Notwithstanding the evidence set out above, Mr Deripaska now denies that the Mirepco campaign took place at all. That denial was made by him for the first time in a witness statement dated 27 April 2012 and, even then, was made through his lawyers on instructions.[489] Mr Deripaska's belated rejection of the Mirepco evidence, however, must be viewed with scepticism; Mr Deripaska has side-stepped the Mirepco issue in his evidence throughout these proceedings. In brief summary:

1) At the jurisdictional hearing, Christopher Clarke J observed that: "*... no evidence has been filed [from the Defendant] that offers any explanation about [the Mirepco campaign] or about Mirepco's activities*".[490]

2) When the matter came before the Court of Appeal, Waller LJ noted that: "*Counsel before the judge told the judge on instructions that Mr Deripaska had not commissioned that report and knew nothing about it, but no evidence was filed which offered any explanation. The judge concluded the report was genuine and a reflection of the assessment of Mr Deripaska and his advisers. That finding has not been challenged and there is still no evidence to counter the inference drawn by the judge*".[491]

3) The only reference to the Mirepco campaign in Mr Deripaska's first round of substantive evidence was a carefully crafted statement in the final paragraph of Mr Deripaska's Third Witness Statement: "*I have not at least knowingly caused or instigated or managed any attempts to damage Mr Cherney's reputation… I was not personally involved* in dealings *with Mirepco or Mr Sam Berkowitz, and I did not authorise or approve any illegal acts.*"

4) In his Fourth Witness Statement, Mr Deripaska goes further in asserting that he was not behind, nor did he authorise or commission, the Mirepco campaign (whether knowingly or otherwise).[492] Significantly, however, Mr Deripaska did not deny that the campaign was instituted on his behalf and Mr Deripaska continued to assert privilege over documents relating to Mirepco.[493]

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489 Gerbi3, para 56 {151C/1/984} The denial was reiterated by Mr Deripaska's Counsel, again "on instructions", at the hearing of Mr Cherney's application for the disclosure of Mirepco documents which took place on 1 May 2012 {5F/15/1392}

490 [2008] EWHC 1530 (Comm) at [251]: {4/1/59}

491 [2009] EWCA Civ 849 at [4]: {4/2/66}

492 Deripaska4, para.527 {8F/64/1754} .

493 Quinn Emanuel's letter of 12 January 2012: {155/1/1118}

K. 2000-2006, AND IN PARTICULAR THE EVENTS OF 10 MARCH 2001

281. The events of 10 March 2001 lie at the heart of this case. As already explained, it is not in dispute that Mr Cherney and Mr Deripaska met at the Lanesborough Hotel on that date and that they both signed Agreement No 1. There is, however, a major dispute as to the purpose of their meeting, what was discussed, and the nature of the agreement that was reached. There are therefore numerous issues of fact which the Court will have to determine, the critical one being whether Supplement No 1 was given by Mr Deripaska to Mr Cherney on 10 March 2001 (and thus formed part of the agreement concluded between Mr Cherney and Mr Deripaska) or whether it was given by Mr Deripaska to Mr Malevsky at a meeting in Moscow a few days later.

282. A number of points have already been made about Agreement No 1 and Supplement No 1. On their face, those documents plainly appear to constitute two parts of the same agreement; it therefore seems inherently likely that they were both provided by Mr Deripaska to Mr Cherney on 10 March 2001. But when the Court also considers the events which led up to the meeting on 10 March 2001, and the conduct of the parties in the period thereafter, it will, the Claimant suggests, be left in no doubt as to the position: Supplement No 1 was indeed signed by both Mr Cherney and Mr Deripaska on 10 March 2001 at the Lanesborough, and did form an integral part of the agreement concluded between them; and the meeting at the Lanesborough Hotel was a meeting of partners at which the sale of Mr Cherney's interest in the joint aluminium business to Mr Deripaska was agreed, and not a meeting between extortioner and victim at which the termination of a *krysha* relationship was negotiated.

Events leading up to the meeting

The merger between Sibal and Sibneft

283. The meeting between Mr Cherney and Mr Deripaska on 10 March 2001 took place not long after an agreement had been reached by Mr Deripaska and Mr Abramovich to merge the respective businesses of Sibal and Sibneft.

284. The basic facts relating to the Sibal/Sibneft merger are not in dispute. Thus it is common ground that:

    1) In 1999 or 2000 the Reubens and Lev Cherney sold their aluminium business to the shareholders of Sibneft.

    2) Negotiations subsequently began in respect of a possible merger between Sibal and Sibneft.

    3) Those negotiations ultimately led to the creation of Rusal.

4) In addition to contributing all of its aluminium assets, Sibal made a balancing payment to Sibneft of approximately US$575 million. The terms of that balancing payment, as ultimately agreed, required Sibal to pay: $50 million within 10 days of completion, $75 million by 26 April 2000, $50 million by 25 August 2000, $50 million by 25 October 2000 and further quarterly instalments of $50 million thereafter, until the debt was fully discharged. Significant interest was also accruing on these sums from, broadly, April 2000.[494]

285. In relation to the merger, there were three key contractual documents – each of which was governed by English law – as follows:

1) A Preliminary Agreement entered into by Mr Deripaska and Mr Abramovich in around late February or early March 2000.[495]

2) A Share Purchase and Sale Agreement dated 15 March 2000 between GSA (Cyprus) Ltd and Runicom Limited.[496]

3) An Amended Share Purchase and Sale Agreement dated 15 May 2000 between the same parties (the "ASPA").[497]

286. It is Mr Cherney's case that the manner in which the Sibal/Sibneft merger was negotiated and completed confirms that he was in partnership with Mr Deripaska.

287. In summary, Mr Cherney's evidence is that:[498]

1) In early 2000, Mr Makhmudov and Mr Nekrich informed him about the sale by TWG to Sibneft and suggested that they, together with Mr Cherney, should seek to agree a joint venture with Sibneft's shareholders. Mr Cherney then spoke to Mr Patarkatsishvili about the possibility of entering into a co-operation agreement. He in turn directed Mr Cherney to approach Mr Abramovich. Since Mr Nekrich already knew Mr Abramovich, Mr Cherney authorised him and Mr Makhmudov to enter into negotiations with Mr Abramovich.

2) Following the commencement of those negotiations, Mr Deripaska said to Mr Cherney that he wanted to take responsibility for dealing with Mr Abramovich. Mr Cherney acceded to this request and arranged, via an acquaintance called Mr Dubovitsky, for Mr Deripaska to meet Mr Abramovich for that purpose.

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494 As to the interest provision, see paragraph 2.6 of the ASPA at {42/1/134} - {42/1/135} . The full $575 million was paid (ahead of schedule) by the end of June 2001, but even that meant that interest of $46,135,025.02 had accrued: see the Protocol to the ASPA executed on 30 June 2001 at {42/1/292}

495 {42/1/86} - {42/1/88}

496 {42/1/105} - {42/1/125} The provisions relating to the balancing payment are to be found in clause 2.

497 {42/1/131} - {42/1/160} The provisions relating to the balancing payment are to be found in clause 2.

498 Cherney6, paras 307-314 {7A/6/325} - {7A/6/329}

3) Mr Deripaska and Mr Abramovich agreed that a joint company called Rusal would be created. Sometime later, during a meeting in Israel in 2000, Mr Deripaska told Mr Cherney that the names of Mr Popov and Mr Malevsky would not appear in the legal documentation relating to the merger. Later still, Mr Deripaska told Mr Cherney that for "political reasons" his name would also not be referred to, so that only Mr Deripaska would sign on behalf of Sibal.

288. This account of events is denied in its entirety by Mr Deripaska. He does not accept either that Mr Nekrich and Mr Makhmudov commenced negotiations with Mr Abramovich or that Mr Cherney was responsible for introducing him to Mr Abramovich.[499] Mr Deripaska also denies that he and Mr Cherney ever discussed the fact that Mr Cherney's name would be omitted from the merger documents.

289. These matters will be explored in cross-examination. At this stage, however, a number of important points should be noted.

290. First, as noted above, at around the time that the merger was agreed Mr Cherney made a number of payments to Mr Deripaska and into the business. As also noted above, the evidence in relation to these payments is, pursuant to the order made at the hearing of 13 June 2012, still developing, and this topic will have to be addressed more fully orally and in evidence. In summary, however, Mr Cherney's evidence will be that he believes that these payments were applied for the purpose of the joint aluminium business. For example, he recalls that during a meeting in Israel in February 2000 (which Mr Deripaska accepts took place)[500] he was asked by Mr Deripaska to make a substantial investment in connection with the balancing payment that would be due to Sibneft. If the Court accepts Mr Cherney's evidence as to the nature and purpose of these payments, this will be fatal to Mr Deripaska's case: as already explained, throughout this litigation Mr Deripaska has vigorously denied that Mr Cherney ever made any investment or contribution to the aluminium business

291. Secondly, Mr Cherney says that he was provided with a draft of the ASPA by Mr Deripaska in 2000: indeed, he says that he was provided with both a Russian translation that was prepared especially for him and also the same version in English. Mr Cherney is certain that he received the English draft in the second half of 2000, but he cannot recall when he received the Russian translation.[501] Since Mr Cherney believes that a meeting took place before 15 May 2000 at which Mr Deripaska told him that only he would be signing the ASPA on behalf of Sibal,[502] the likelihood is that it was at that meeting that Mr Deripaska gave him the Russian translation.

292. For his part, Mr Deripaska denies that he ever provided a draft of the ASPA to Mr Cherney. He is

499 Deripaska3, para 435 {8B/27/680}
500 Deripaska3, para 433 {8B/27/680}
501 Cherney8, para 170 {7C/8/676}
502 Cherney8, para 170 {7C/8/676}

also driven to deny that the English draft in Mr Cherney's possession was created for the purposes of the merger negotiations;[503] even a cursory examination of the document suggests otherwise.

293. Thirdly, the contractual documents relating to the merger expressly referred to the fact that the shares in Sibal were owned not only by Mr Deripaska but also by certain partners. In particular:

1) Clause 4.1 of the Preliminary Agreement provided that: "*Parties 1 and 2 warrant that, together with their partners (not including TWG or any companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of Parties 1 and 2 and are not subject to any third party rights, disputes or attachments*".

2) The ASPA referred to GSA (Cyprus) Limited as "*Party 2*" and also referred to the "*Other P2 Shareholders*", a term defined as meaning "*those other persons and/or entities (whether legal or natural) who together with Party 2 are the legal and/or beneficial owners and/or holders of 100 per cent of the shares (both in registered and bearer form) of the P2 Companies as of the Execution Date, and/or the date on which the P2 Shares are to be transferred to Party 1 pursuant to this Agreement*".

294. Insofar as these agreements referred to the facts that Mr Deripaska had partners and GSA (Cyprus) was not the only person which owned shares in Sibal, they are entirely consistent with Mr Cherney's case that he jointly owned Sibal with Mr Deripaska and that a deliberate decision was taken not to identify him in the merger documentation.

295. In contrast, the wording of these agreements presents a real difficulty for Mr Deripaska's case. This is especially so in light of the fact that they were drafted by experienced lawyers (Mr Hauser and Mr Mishakov) and by individuals with a detailed knowledge of Mr Deripaska's business (Mr Hauser, Mr Mishakov, and Mr Bulygin). Recognising that the agreements support Mr Cherney's case, both Mr Deripaska and Mr Hauser have been driven to provide evidence which is entirely unrealistic:

1) Mr Deripaska says that when Clause 4.1 of the Preliminary Agreement referred to "*partners*", the intention was to ensure that a "*number of third parties – such as suppliers, plant managers and trader partners – would support the venture*".[504] But if this is correct why did the warranty in Clause 4.1 apply to the ownership of the assets that were to be the subject of the merger? Mr Deripaska also says that he "*wanted to make sure that TWG was not involved (as Mr Abramovich had assured me they were not*)", but again this explanation is wholly unsatisfactory because any concerns in relation to TWG were already adequately dealt with by the express carve-out that was included in Clause 4.1: *"(not including TWG or any*

503 {2A/17/503} - {2A/17/504}
504 Deripaska3, para 442 {8B/27/682}

companies and/or individuals related thereto or affiliated therewith)". Indeed, Mr Deripaska even claims that with hindsight he believes that the wording used in Clause 4.1 was "*not quite correct*". But this is difficult to reconcile with the evidence provided in the *Berezovsky v Abramovich* litigation by Mr Bulygin (Mr Deripaska's right-hand man, who, along with Mr Deripaska negotiated the Preliminary Agreement with Mr Abramovich and Mr Shvidler), where he said that each term of the Preliminary Agreement was the subject of specific discussion between the parties.[505]

2) Mr Hauser says that he insisted on the inclusion of the term "*Other P2 Shareholders*" in the ASPA "*to cover the possibility that Mr Deripaska owned his shareholding in some of the companies via persons other than GSA*".[506] But it is very difficult to understand why it was necessary for Mr Hauser to cover such a possibility: why did he not simply ask his client, Mr Deripaska, to identify the entities through which he held his shares in Sibal?

296. Fourthly, on 6 December 2000 a meeting took place between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich at Le Bourget Airport. The transcript includes the following exchange between Mr Abramovich and Mr Berezovsky:[507]

> "*MR ABRAMOVICH: with aluminium it's very simple. If we go legal, they would have to do the same. They can't have one half legalised and the other half – not.*
> *MR BEREZOVSKY: I agree, so...*
> *MR ABRAMOVICH: Then they will all appear – Bykov, Misha, Anton and Aksyon, and Oleg Deripaska, and his ...*... companies, nobody would even talk about it. You don't agree with this, do you?*"

297. The reference to "*Misha*" was clearly a reference to Mr Cherney (and the reference to "*Anton*" was to Mr Malevsky). This therefore confirms that Mr Cherney was regarded by Mr Abramovich as having an interest in Rusal. Given the importance of this transcript to the matters presently in dispute, it is notable that it has not been addressed by either Mr Deripaska or Mr Abramovich in their evidence.

298. Fifthly, Mr Deripaska claims that it would not have made any sense for Mr Nekrich and Mr Makhmudov to have entered into negotiations with Mr Abramovich, since they knew virtually nothing about the aluminium business.[508] Were that the case, it would have put them in good company, because neither did Mr Abramovich. However, as already explained, Mr Makhmudov in particular had substantial business dealings with both Mr Cherney and Mr Deripaska over many years and indeed he even held a share of Radom as a nominee for Mr Cherney. Both of them had many years experience in the metals industry, with a particular focus on copper. Mr Nekrich attended the meeting in Paris on 23 April 1999 at which an important decision was taken to

505 {153/2/42}
506 Hauser6, para 23 {8A/15/314}
507 {18E/1/311AF}
508 Deripaska3, para 435 {8B/27/680}

restructure the aluminium business. It will become apparent at trial that Mr Deripaska has not been candid about the extent of his business dealings with Mr Nekrich. It is therefore entirely plausible that Mr Makhmudov and Mr Nekrich would have commenced the negotiations with Mr Abramovich about potential cooperation.

Mr Cherney's interview in November 2000

299. According to Mr Cherney, by the end of 2000 there had been a distinct change in the nature of his relationship with Mr Deripaska. Mr Deripaska had developed close political connections.[509] As a result of the Sibal/Sibneft merger, Mr Deripaska had become one of the most influential businessmen Russiam with fortunes joined to Mr Abramovich. He was about to marry Polina Yumasheva, daughter of Mr Yumashev and (thanks to his marriage to President Yeltsin's influential and powerful daughter, Tatiana, step-grand-daughter of Presidnt Yeltsin). He had secured a place at the very heart of Russia's elite. Mr Cherney, in contrast, had been living in Israel for over 6 years. Many of his personal connections were no longer in power. His influence in Russia had diminished.

300. It was against this background that Mr Cherney expressed a desire, during an interview with the Vedomosti newspaper on 1 November 2000, to sell his interest in Rusal:[510]

> "***If at first you were against the merger why did you agree in the end?***
> *A company should not have more than one head for it to be successful. Oleg made this decision, he thought it was for the best. It remains to be seen. Meanwhile I am waiting for the Russian economy to pick up and when the shares go up to their real value I will probably sell them*
>
> ***To who?***
> *To Deripaska, or to someone else who is prepared to pay the fair price for my shareholding in Russky Aluminiy*".

301. This interview was seen on 7 November 2000 by Mr Hauser, the solicitor who had acted for Mr Deripaska in the Sibal/Sibneft merger negotiations.[511] Given the importance of the subject matter, it is reasonable to infer that Mr Hauser would have drawn the article to the attention of Mr Deripaska. Two important points arise out of this:

    1) First, why did Mr Deripaska not take any steps to repudiate what Mr Cherney had said about being a shareholder in Rusal? If, as Mr Deripaska now seeks to contend, he was never in partnership with Mr Cherney then his failure to take any such steps is extremely surprising. This is especially so given that a few days after the *Vedomosti* interview was published an article appeared in the Moscow Times in which Mr Cherney was again quoted as saying that

509 Cherney6, para 323 {7A/6/332}
510 {135/1/153} - {135/1/162}
511 {48K/1/3138A}

he owned an interest in Rusal.[512]

2) Secondly, as a result of the interview Mr Deripaska would have known that there was a real prospect of him reaching an agreement with Mr Cherney to buy out the latter's interest. This is an important point because, as explained further below, although on 10 March 2001 Mr Deripaska sought to give Mr Cherney the impression that he was drafting Agreement No 1 and Supplement No 1 from scratch, in fact it now seems far more likely that he had completed some or all of the drafting in advance of the meeting.

Mr Deripaska's meeting with bankers in January 2001

302. On 21 January 2001, Mr Deripaska had a meeting with a group of bankers in London at which he was reported to have said that Mr Cherney was a "*minority shareholder in the Sayansk smelter, with just 20%*".[513]

303. When Mr Deripaska was asked about this report in correspondence his solicitors provided a coy response. After an order had been made requiring a response on this issue, they admitted that Mr Deripaska had indeed met with the representatives of various European banks in London on 21 January 2001, but they said that they made no admissions "*as to the purported contents of the discussions at that meeting as set out in the press report*".[514]

304. It is striking that Mr Deripaska (via his solicitors) chose to make a non-admission. If, as Mr Deripaska alleges, his only relationship with Mr Cherney was pursuant to a *krysha* then there is absolutely no reason why Mr Deripaska would have said that Mr Cherney owned an interest in the Saaz plant. Accordingly, on instructions Mr Deripaska's solicitors ought to have been able to deny categorically that he made the reported statement. In the circumstances of this case, the non-admission speaks volumes: an attempt to put Mr Cherney to proof of a matter within Mr Deripaska's knowledge, while leaving "wriggle room" for Mr Deripaska.

The meeting on 10 March 2001

305. It is common ground that (a) the meeting between Mr Cherney and Mr Deripaska on 10 March 2001 took place in the latter's room at the Lanesborough Hotel and (b) only Mr Cherney and Mr Deripaska were present during their discussions.

306. In summary, Mr Cherney's evidence about the meeting on 10 March 2001 is as follows:[515]

1) The meeting was just one of the regular meetings that took place between him and Mr

512 {135A/1/2679}
513 {135/1/163}
514 {155F/1/1984}
515 Cherney6, paras 333-348 {7A/6/335} - {7A/6/341} ; Cherney8, paras 174-182 {7C/8/667} - {7C/8/680}

Deripaska. The purpose was for Mr Deripaska to provide an update on the Sibal/Sibneft merger and the future strategy and activities of Rusal.

2) After they had discussed these matters for a period, Mr Cherney asked Mr Deripaska whether it would be possible to receive a dividend from the business. In response, Mr Deripaska stated that if Mr Cherney wanted money then he should sell his share in the joint business to Mr Deripaska. Despite the interview which he had given to *Vedomosti* in November 2000, Mr Cherney had not anticipated that Mr Deripaska would offer to buy him out.[516]

3) Mr Deripaska made an offer to Mr Cherney. He said that he did not have enough funds to buy out Mr Cherney entirely. He therefore offered to make an advance payment to Mr Cherney of US$250 million and to pay Mr Cherney the full value of his 20% interest in Rusal (less the US$250 million) over a number of years. Mr Deripaska undertook to hold Mr Cherney's shares in Rusal on trust for him pending full payment of this sum. That undertaking was given by Mr Deripaska against a background in which (a) both parties were well familiar with the concept of shares being held beneficially for them by others and (b) Mr Deripaska had hitherto held interests through his entities on Mr Cherney's behalf.

4) Mr Cherney asked Mr Deripaska where any disputes would be dealt with. That Mr Cherney should have asked this is scarcely surprising: as Mr Deripaska well knew, he was especially concerned about this because he could not return to Russia due to fears for his safety. Mr Deripaska replied that, as was the case with the Sibal/Sibneft merger agreement (a draft of which had been provided to Mr Cherney, as explained above), the English courts would have jurisdiction and English law would govern the agreement. Mr Cherney was satisfied by this.

5) Mr Cherney asked Mr Deripaska to put the agreement which they had reached into writing. Mr Deripaska then started – or at least purported to start[517] – typing the agreement on his laptop and he read out to Mr Cherney a draft of the document that subsequently became Agreement No 1. Mr Cherney did not know why Mr Deripaska chose to refer only to 17.5% of Sibal or why he decided to structure the payment in the way that he did, but Mr Cherney assumed that Mr Deripaska had good reasons for doing so. At all events, Mr Cherney was not concerned about what happened to his shares in Sibal: he was only interested in being paid by Mr Deripaska for his 20% stake in Rusal.

6) Mr Cherney asked why the document which Mr Deripaska had read out did not refer to his 20% interest in Rusal. Initially, Mr Deripaska said that he was reluctant to record this part of the transaction in writing because he had promised Mr Abramovich that Mr Cherney's name would not be linked in any documents to Rusal. Eventually, however, Mr Deripaska agreed to

516 Cherney8, para 172 {7C/8/677}
517 Cherney8, para 175 {7C/8/678}

put the missing terms of the agreement into writing and he said that he would meet Mr Cherney for lunch once he had completed the necessary drafting. Mr Cherney then left Mr Deripaska's hotel room and went to meet his wife.

7) Mr Deripaska called Mr Cherney when he was ready to meet for lunch. Although Mr Cherney was originally unable to recall where the lunch took place, he has recently been able to establish – having been provided with photographs of the building – that it was probably a restaurant called (at that time) Vong.[518]

8) Mr Deripaska brought with him to the lunch a copy of Supplement No 1 which referred to Mr Cherney's interest in Rusal. This had already been signed by Mr Deripaska.[519] Mr Cherney noticed that there was no English jurisdiction or choice of law clause, but he was keen to get the document finalised and so he did not press the point for the document to be amended in light of Mr Deripaska's earlier oral assurances about those matters.

9) After lunch Mr Cherney and Mr Deripaska returned to Mr Deripaska's room at the Lanesborough Hotel. Mr Deripaska had already printed out and signed copies of Agreement No 1 and Supplement No 1. Mr Cherney signed one set of these documents and left them with Mr Deripaska; he also signed another set which he retained along with the photocopy of Supplement No 1 (signed only by Mr Deripaska) that Mr Deripaska had brought with him to the lunch.[520]

10) Mr Cherney returned to Israel shortly after 10 March 2001 and gave these three documents to his assistant, Elena Skir. Mr Cherney asked Ms Skir to photocopy the documents and then on around 28 March 2001 he gave the original versions of Agreement No 1 and Supplement No 1, as signed by both parties, to Mr Batkov for safekeeping. This aspect of Mr Cherney's evidence is corroborated by both Ms Skir and Mr Batkov.[521] According to Mr Batkov, the two originals remained in his office in Bulgaria until 2006, when they were provided to Stephenson Harwood, the solicitors that were acting for Mr Cherney at the time this claim was issued.

307. Unsurprisingly, Mr Deripaska's account of the meeting at the Lanesborough Hotel is completely different. He claims that:[522]

1) It was only in 2001 that he felt secure enough to attempt to terminate the krysha relationship. By then he had a "*very good security service made up of a few hundred people*" and he had

518 Cherney 8, para 178 {7C/8/679}
519 Cherney8, para 180 {7C/8/679}
520 Cherney8, para 181 {7C/8/680}
521 Skir2, paras 21-22 {7E/36/1146} ; Batkov3, para.47 {7D/13/844}
522 Deripaska3, paras 467-503 {8B/27/689} - {8B/27/698}

"*good relations with Governmental authorities at all levels with law enforcement agencies*".[523]

2) Having decided to take steps to terminate the krysha, Mr Deripaska met with Mr Malevsky in Moscow in late February or early March 2001. During the course of that meeting, Mr Malevsky told him that TWG had paid US$410 million to terminate their krysha and said that Mr Deripaska would have to pay a similar figure. In particular, Mr Malevsky stated that Mr Deripaska should pay US$250 million to Mr Cherney and that he would take the balance for himself.

3) On 4 March 2001, Mr Deripaska started to draft the document that subsequently became Agreement No 1. Having realised that he needed a template to work from, he was given a pre-existing contract on a floppy disk by either Witness B or Mr Mishakov. On 7 March 2001, he then drafted Agreement No 1 in his office in Moscow. He also drafted Supplement No 1 "off the top of his head", i.e. without the assistance of a template, and printed both documents there.

4) The only reason why Mr Deripaska referred in Agreement No 1 and Supplement No 1 to a sale of shares in Sibal and Rusal respectively was in order to disguise the payments which he was making to Mr Cherney and Mr Malevsky. Specifically, Mr Deripaska was concerned to ensure that the payments could be transferred through the banking system.

5) Mr Deripaska's intention was to give Agreement No 1 to Mr Cherney and Supplement No 1 to Mr Malevsky. The opening words of Supplement No 1 ("*In fulfilment of Agreement No 1 dated 10th March 2001, the Parties have agreed on the following …*") were intended to reflect the fact that the arrangement with Mr Malevsky was to follow, and be related to, the arrangement which he had reached with Mr Cherney.

6) Mr Deripaska flew to London to meet Mr Cherney on the morning of 10 March 2001. He signed and dated two copies of Agreement No 1 during the course of the flight. Mr Deripaska admits that he also had copies of Supplement No 1 with him and he says that it is possible that he signed those at the same time.

7) Mr Deripaska called Mr Cherney when he arrived in London and they arranged to meet at the Lanesborough Hotel. At the meeting, Mr Deripaska "*made it clear that there would be no continuation of the* krysha"[524] and he produced two copies of Agreement No 1. After some discussion about how the US$250 million would be paid, Mr Cherney then signed the two copies. Although one copy was retained by Mr Deripaska, he has never been able to find it.

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523 Deripaska3, para 467 {8B/27/689}

524 Deripaska3, para 485 {8B/27/693}

Mr Deripaska denies that: he drafted or printed any documents at the Lanesborough Hotel; he went out to lunch with Mr Cherney; or he ever discussed Supplement No 1 with Mr Cherney or showed it to him.

8) According to Mr Deripaska, after he returned to Moscow he met Mr Malevsky again. He gave Mr Malevsky a copy of Supplement No 1 (which he had already signed) and told him that he would need time to make the payments thereunder. Mr Malevsky did not sign Supplement No 1 or look at the document in much detail, but he took it away with him at the end of the meeting. Mr Deripaska cannot remember either the date or the venue of this meeting. Moreover, as with Agreement No 1, he says that he has never been able to find his copy of Supplement No 1.

9) The precise mechanics of the payments to Mr Malevsky were not finalised until after Mr Malevsky's death in a parachuting accident in November 2001.[525] In the event, the mechanics were agreed by Mr Deripaska at a meeting in early 2002. In his Third Witness Statement Mr Deripaska said that he met three men, two of whom he only knew by their nicknames "*Tolstyak*" and "*Kudryavy*". In his Fourth Witness Statement Mr Deripaska now claims to have known that these were the nicknames of Mr Sergei Aksenov and Mr Dimitri Pavlov respectively.[526] Mr Deripaska says that he started to make payments under Supplement No 1 from January 2002 onwards.

308. It will be apparent that neither party's evidence leaves any room for ambiguity: either Mr Cherney or Mr Deripaska is lying about what was discussed on 10 March 2001 and in particular about whether Supplement No 1 was provided by Mr Deripaska to, and agreed by Mr Deripaska with, Mr Cherney.

309. It is Mr Cherney's case that the account of the meeting provided by Mr Deripaska is wholly fictitious and has been invented by him after the event in a desperate attempt to evade his legally binding obligations under Supplement No 1 (and has been crafted by him to meet the evidence as it has come out). Mr Deripaska's version of events will of course be tested in detail in cross-examination, but there a number of important points that can be made at this stage.

310. First, Mr Deripaska's own evidence is that by 2001 he had developed a formidable security service which consisted of several hundred persons, around 40 of whom were engaged as his personal security guards.[527] Mr Deripaska claims that it was for this reason that he felt able to terminate the *krysha* in 2001. In fact, however, the evidence shows that Mr Deripaska had a sizeable security service long before 2001. In any event, there is a more fundamental question: given the strength of

525 Deripaska3, paras 510 and 511 {8B/27/700}
526 Deripaska4, paras.517.3 and 517.4 {8F/64/1745} - {8F/64/1746}
527 {2A/17/514}

Mr Deripaska's security service in 2001, and the fact that he had become one of Russia's most powerful businessmen (with close ties to President Putin), why would he have needed to pay anything at all to Mr Cherney and Mr Malevsky to terminate the *krysha*? This is especially so since Mr Deripaska does not claim to have paid any *dolya* at all since 30 November 1999. Moreover, on Mr Deripaska's case the sums which he agreed to pay Mr Cherney and Mr Malevsky in March 2001 do not make sense: US$410 million would have represented four times what he had allegedly paid in *dolya* since the start of the *krysha* in 1995.

311. Secondly, as has been noted already, when viewed objectively Agreement No 1 and Supplement No 1 appear on their face obviously to form part of a single agreement between Mr Cherney and Mr Deripaska. In particular, if Mr Cherney and Mr Deripaska were never partners in the aluminium industry then it is remarkable that Mr Deripaska should choose to disguise Agreement No 1 as a sale by Mr Cherney of shares in Sibal, the very business which Mr Deripaska says that Mr Cherney had tried to infiltrate for so many years. Similarly, if Supplement No 1 was intended to disguise payments being made to Mr Malevsky then questions arise as to why that document does not refer anywhere to Mr Malevsky, why it has not been signed by Mr Malevsky, and most importantly why Mr Deripaska chose to refer to 20% of the shares in OJSC Russky Alyuminiy – a figure which is entirely consistent with Mr Cherney's case as to what he would have been entitled to in the merged Sibal/Sibneft business by virtue of his 40% interest in Sibal. Although he has had numerous opportunities to do so, Mr Deripaska has never been able properly to answer these questions.

312. Third, if Supplement No 1 was intended to be a sham document given to the representative of an OCG to end a *krysha*, it would have been an act of madness to include in that document a reference to a future sale of a 20% interest in OJSC Russky Alyuminiy and to pay the value of that share to *"Party No. 1"*, with the inevitable risk that the document would be relied upon to force such a sale and payment. This would have been an act of monumental folly – the action of a prize fool. Mr Deripaska is no fool. Mr Deripaska could have prepared a sham agreement of any type – a loan agreement or a services agreement, for example – dealing with any subject matter. But on Mr Deripaska's case, he just happened to choose this one.

313. Fourth, it is instructive to consider when and how Mr Deripaska first started to claim that Supplement No 1 represented an agreement reached with Mr Malevsky rather than Mr Cherney. At a hearing in the Commercial Court on 9 February 2007 the following exchange took place between Tomlinson J and Roger Stewart QC, Mr Deripaska's then Leading Counsel:

> "*MR JUSTICE TOMLINSON: It is common ground that these were agreements actually made in London?*
>
> *MR STEWART: It is common ground that the first agreement was signed in London, this one here. I believe it is common ground that that is the signature of Mr Deripaska there and it has Mr Cherney's signature on it as well. <u>The status of the second one is still being investigated as far as we are concerned.</u>*

….

MR JUSTICE TOMLINSON: Right, yes. On the face of it, I suspect, that it has the same date in Russian as the first, does it not?

MR STEWART: That is correct, the 10th March. There are a whole series of points, my Lord, but the language and so forth of these documents might suggest that they were created at different times. There are a whole series of different matters, forensic points which may or may not be taken in relation to the documents".

314. If Mr Deripaska's case had always been what he now says about Supplement No 1, it is impossible to understand why Mr Justice Tomlinson was not told that Supplement No 1 was never given to Mr Cherney and that it represented an agreement between Mr Deripaska and Mr Malevsky.

315. It appears that Mr Deripaska's current case is an invention crafted in the light of his forensic investigation of the position. In April 2007 Mr Hauser exercised a right to inspect the original version of Supplement No 1 at the offices of Stephenson Harwood. Having seen that it was signed by Mr Cherney, Mr Hauser instructed a forensic expert, Dr Audrey Giles, to examine the document. Dr Giles then produced a report stating that, in her opinion, Mr Cherney had signed Supplement No 1 whilst using a different pen to that which both he and Mr Deripaska had used to sign Agreement No 1.[528] It was only following that evidence that Mr Deripaska started to claim that he had given Supplement No 1 to Mr Malevsky and that Mr Cherney must have obtained it from Mr Malevsky and subsequently inserted his own signature.

316. Before considering the forensic evidence relating to the document, a preliminary point needs to be made at the outset. It is common ground that there were two sets of respectively Agreement No 1 and Supplement No 1. However, only Mr Cherney has produced his set of originals. It will be necessary to consider the plausibility of Mr Deripaska's claim that he cannot locate his set (or indeed an electronic version of the documents). The suggestion that these obviously important documents were not carefully filed, particularly by such a meticulous man as Mr Deripaska, beggars belief.

317. As to the forensic evidence about Mr Cherney's signature on Supplement No 1, the position now is as follows:[529]

    1) It is common ground between the parties' experts that the dates and signature of Mr Deripaska on Agreement No 1 and Supplement No 1, together with the signature of Mr Cherney on Agreement No 1, were completed using one type of blue ballpoint pen ink whereas Mr Cherney's signature on Supplement No 1 was completed using a second type of blue ballpoint pen ink.

528 Hauser4, paras 89-95 {8/3/50} - {8/3/52}
529 {10/5/64}

2) There is a dispute as to whether Mr Cherney's signature on Supplement No 1 is genuine. Mr Cherney's expert, Mr Robert Radley, considers that it is a genuine signature – albeit one which appears to have been completed by Mr Cherney whilst in an awkward stance – whereas Mr Deripaska's expert, Ms Liudmila Sysoyeva, believes that there is a very high probability that the signature is a forgery.

3) The experts are agreed that there are three impression signatures in the style of Mr Cherney's signature on Agreement No 1. They are also agreed that the Cherney signature on Supplement No 1 was written whilst Supplement No 1 rested on top of Agreement No 1. Ms Sysoyeva sees in this further evidence of an elaborate (indeed, counterintuitive) forgery. Mr Radley considers the impression signatures, like the signature on Supplement No 1, to be genuine signatures of Mr Cherney.

318. The Court will have to consider the effect of this expert evidence in due course.[530] For his part, however, Mr Cherney is certain that he signed both Agreement No 1 and Supplement No 1 when he was together with Mr Deripaska at the Lanesborough Hotel. Whilst the matter will have to be explored in evidence with Mr Deripaska, it will be submitted that his story in relation to Supplement No 1 is wholly implausible, and should not be believed.

319. The fourth point to make at this stage about the meeting on 10 March 2001 arises out of the suggestion by Mr Deripaska that Mr Cherney must be lying because (a) Mr Deripaska would not have had a sufficient amount of time in which to type the documents whilst in London and (b) Mr Deripaska could not have printed or photocopied, alternatively did not in fact print or photocopy, any documents in the Lanesborough Hotel.

320. Taking these issues in turn:

1) Mr Cherney understood at the time that Mr Deripaska was typing Agreement No 1 from scratch; that is the impression he gained from Mr Deripaska. His evidence makes clear, however, that he did not actually see what Mr Deripaska was typing. Accordingly, Mr Cherney says that he cannot rule out the possibility that Mr Deripaska had already drafted some or all of Agreement No 1 prior to the meeting at the Lanesborough.[531] Given all the circumstances, such as the respective positions attained by Mr Deripaska and Mr Cherney by that time or the terms of the interview which Mr Cherney gave to *Vedomosti* in November 2000, common sense would say that it would not be surprising if Mr Deripaska had planned

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530 There are further issues between the forensic handwriting and document examination experts. Ms Sysoyeva advances a number of arguments in support of the proposition that Supplement No 1 was not signed by and given to Mr Cherney on 10 March 2001. Mr Radley disagrees strongly (and, it will be submitted, convincingly) with such theories. The supplemental reports of Mr Radley and Ms Sysoyeva were finally exchanged on 20 June 2012, and will be added to the trial bundles in due course.

531 Cherney8, para.175. {7C/8/678}

in advance of the meeting to make an offer to buy out Mr Cherney. Equally, even if Mr Deripaska had substantially completed the drafting of Agreement No 1 prior to the meeting at the Lanesborough Hotel, it is understandable that he might have wanted to convey to Mr Cherney the impression that he was drafting the document from scratch: for example, he might not have wanted Mr Cherney to realise that he had come to the meeting with a pre-meditated plan to buy Mr Cherney's shares. Of course this is necessarily speculation after the event.

2) This proposition originally rested on two bases: firstly, that no charges for printing or photocopying appear on Mr Deripaska's bill; and secondly that it would not have been possible for the documents to have been printed at the Lanesborough. The second of these can now be disposed of: the IT experts are agreed that it was perfectly possible for them to have been printed at the hotel. Both documents were produced on a laser printer[532] and there were laser printers located at the main desk of the hotel, the switchboard, and in the office area behind the reception desk.[533] The documents could easily, for example, have been taken to reception on a floppy disk (and it should be recalled that Mr Deripaska has admitted that he had both documents saved on a floppy disk)[534] and been printed there.[535] Having printed the documents, it would have been straightforward for Mr Deripaska, once he had signed two copies of Agreement No 1 and Supplement No 1, to obtain a photocopy of Supplement No 1 at the Lanesborough Hotel for the purpose of showing Mr Cherney at lunch. As to the first, the mere fact that no charges appeared on Mr Deripaska's bill does not suggest, let alone prove, that Mr Deripaska did not print or photocopy any documents at the Lanesborough Hotel. That Mr Deripaska, not just the current, but a regular, occupant of one of the most expensive suites in one of London's premier hotels, might not have been charged for a few pages of printing, is hardly a surprising proposition. These matters will be explored in cross-examination with the two former employees of the Lanesborough Hotel that have been called as witnesses by Mr Deripaska.

321. Finally, it is important to emphasise how scant Mr Deripaska's evidence is in relation to the meeting

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532 {10/6/87} - {10/6/101}

533 Macfarlane2, para.15(c) {8D/34/1162} .

534 {155/1/133} and {155/1/177}

535 An issue was raised on Mr Deripaska's behalf as whether it would have been possible to open Cyrillic documents on the hotel's computers. The IT experts agree that it would have been. The only potential problem they have identified relates to the file names of the documents: if (and only if) Mr Deripaska's laptop ran Windows 2000 (a more modern version of the operating system than that installed on the hotel's computers), then it would have been necessary for the files have had, or to have been renamed to have, English file names in order for the documents to be opened (and then printed). Given Mr Deripaska was an international businessman, frequently on the move and staying in hotels, dealing in both English and Russian with lawyers and fiduciaries and so on from all over the world, and with (necessarily) years of experience with Windows 97 where he had to save files with English file names, it will be submitted that this would not in reality have presented a problem. Ultimately, the point cannot now be tested since, in common with his signed copies of Agreement No 1 and Supplement No 1, Mr Deripaska also claims to be unable to find the floppy disk or any electronic version of the documents.

which allegedly took place in January 2002 between him, Mr Aksenov, and Mr Pavlov to discuss the payments to be made under Supplement No 1. Somewhat surprisingly, in his witness statement at the jurisdiction stage, Mr Deripaska failed to make any reference at all to this meeting. Subsequently, Mr Deripaska claimed only to have known these men by their nicknames. In his most recent witness statement, Mr Deripaska identifies them by name. At no stage, however, has Mr Deripaska provided any details about the meeting, which would, on any view, have been a significant meeting. How was it arranged? Where did it take place? On what date? How long did it last? The credibility of Mr Deripaska's evidence on this, and indeed on the payments purportedly made pursuant to this agreement, will have to be tested in cross-examination.

Events after the meeting

322. The Court will have to examine at trial the conduct of the parties in the period after 10 March 2001. Mr Cherney will submit that it corroborates his account. The conduct of Mr Deripaska in particular during this period confirms that he must have given Supplement No 1 to Mr Cherney during the course of that meeting and, more importantly, that, Supplement No 1 forms an integral part of the agreement concluded between Mr Cherney and Mr Deripaska on that day.

323. In the paragraphs which follow the Court's attention is drawn to events in the period between 2001 and 2006 (when this claim was issued) that are of particular significance. At the outset, however, two general points can be made:

    1) In the period after March 2001 and indeed until recently, Mr Deripaska remained very close friends with Mr Popov: as is common ground, Mr Deripaska has even made Mr Popov the godfather to his daughter born in 2003.[536] Another striking fact (which is also not in dispute) is that at some stage following the death of Mr Malevsky in November 2001, Mr Deripaska provided assistance to his son who was having problems at school.[537] As the Court will readily appreciate, it is impossible to reconcile such behaviour with Mr Deripaska's *krysha* allegations.

    2) There is correspondence in the period between March 2001 and March 2006 in which, to Mr Deripaska's knowledge, Mr Cherney claimed an entitlement to be paid under Supplement No 1. It is also Mr Deripaska's evidence that he met Mr Cherney in Vienna in 2003 and in Kiev in 2005, and that on both occasions Mr Cherney asked for more money. If, as Mr Deripaska says, he had already sought to terminate the *krysha* and therefore Mr Cherney's claims under Supplement No 1 were nothing more than attempts to extort yet further money from him, why did Mr Deripaska never report Mr Cherney to any governmental authorities or law enforcement agencies?

536 Deripaska4, para 420 {8F/64/1720}
537 First witness statement of Witness A, para 116 {8D/31/985}

Events in 2001

324. Shortly after 10 March 2001, Mr Cherney gave an interview to Vedomosti. This was published on 28 March 2001 under the title "*Deripaska to acquire aluminium business of Mikhail Chernoy*". In the article Mr Cherney was quoted as having said that "*Deripaska has received an option for buying out my shares in aluminium smelters. The agreement is effective until 2003, and Deripaska can buy out the shares at any moment. We have signed a proforma contract, according to which I will give him everything, and he will have to pay for this deal. If the deal is not paid according to the contract terms, the shares will return to me*". [538]

325. Following the publication of this article Mr Deripaska telephoned Mr Cherney and asked him to refrain from disclosing the terms of the agreement which they had reached.[539] More importantly, however, Mr Deripaska never took any steps to contradict the statements by Mr Cherney. On the contrary, Mr Deripaska himself announced that he had bought out Mr Cherney's interest. For example:

    1) On 30 March 2001, Reuters published a report entitled "*The head of Sibal says that he can buy Chernoy's aluminium shares*". The article includes quotations from Mr Deripaska, including the following: "*It looks like (Chernoy) is about to sell ... (The terms of the sale) are not known yet, a tender is likely*".[540]

    2) On 31 March 2001, Interfax reported that Mr Deripaska had announced to journalists in Moscow that he was considering whether to purchase 17% of shares in Sibal from Mr Cherney.[541]

326. Whilst this will have to explored in evidence, for present purposes, the important point is that if, as Mr Deripaska now seeks to contend, the meeting on 10 March 2001 had concerned the termination of a *krysha* relationship, then it is very difficult to understand why Mr Deripaska failed to repudiate the public statements made by Mr Cherney and why he himself made announcements about having purchased Mr Cherney's share of Sibal. Mr Deripaska's case is that he only disguised Agreement No 1 as a sale of shares in Sibal in order to legitimise the transaction for the purposes of the banking system: but if that is correct, then why did he also publicly announce that he had purchased Mr Cherney's shares in Sibal?

327. Finally in relation to events in 2001, it is significant to note that, according to Mr Cherney, in July and December 2001 Mr Deripaska visited him at his house in Israel.[542] Again, on Mr Deripaska's

538 {135/1/164B}
539 Cherney 8, para 186 {7C/8/681}
540 {135A/1/354A}
541 {135A/1/354C}
542 Cherney8, paras.189-190 {7C/8/683}

case he would have had no reason to visit Mr Cherney after their meeting on 10 March 2001 when he was feeling sufficiently secure to terminate the *krysha*. Unsurprisingly, Mr Deripaska denies that he met Mr Cherney albeit that he admits that he was in Israel on those dates.[543] This will be explored with him in cross-examination.

Events in 2002

328. In later 2001, Mr Cherney instructed Mr George Philippides, a Cypriot accountant, to research his financial history with a view to providing independent confirmation of the source of his wealth. For present purposes, what is significant about this episode is that whilst preparing his report Mr Philippides had various discussions and meetings with Mr Cherney, the Syndikus personnel, Mr Karam, and employees of Mr Deripaska (most notably Witness B and Mr Mishakov).

329. As a preliminary point, the fact that Witness B and Mr Mishakov co-operated with Mr Philippides for the purpose of the audit is at odds with Mr Deripaska's case: why would the victim of an extortion racket, having just freed himself after 6 years, provide his former extortioner with the assistance of two of his closest aides? A related point, which has already been noted, is that in circumstances where Mr Deripaska is now contending that Mr Cherney never had an interest in Bluzwed Metals, it is curious that Witness B and Mr Mishakov specifically helped Mr Cherney to promote that company as his own for the purposes of the Philippides report.

330. The true position is of course that Mr Deripaska and his employees liaised with Mr Philippides because Mr Deripaska considered it appropriate to assist his former partner. Indeed, the existence of their partnership was specifically confirmed by Mr Mishakov when he met with Mr Philippides on 21 January 2002 at Rusal's office in Moscow. According to Mr Philippides' contemporaneous note of the meeting, Mr Mishakov confirmed that:[544]

> "*... MC was up to about a year ago Mr Deripaska's partner in owning Siberian Aluminium the major operating subsidiary. Oleg Deripaska effectively started out as MC's assistant and eventually took over. MC was not directly involved in the operations of Sibirsky this was delegated to Mr Deripaska.*
>
> *MC advised Deripaska on strategy and acquisition targets but other than that really only acted as financier. Furthermore he knew of MC's aluminium trading activities and confirmed that these were largely done with Deripaska and in many cases the legal side to the work was done by Sibirsky's legal department.*
>
> *He also confirmed that he was aware that a buyout had been agreed and that MC had effectively divested himself of any interest in the group*".

331. Mr Mishakov also stated that:

> "*... if we asked anybody that ever dealt with Mr Chernoy they would confirm that he is an*

543 Deripaska4, para.333 {8F/64/1700}
544 {27/6/59} - {27/6/60}

honourable businessman and true to his word. But he did one mistake. He left Russia and left himself exposed to the mercy of anybody that wanted to gain control of his businesses. He was not present to defend himself and never bothered to even try to defend himself or retaliate those that were trying to harm him".

332. Self-evidently, this document creates a serious difficulty for Mr Deripaska's case. As with the other contemporaneous documents that are impossible for Mr Deripaska and his witnesses to explain (most notably the Syndikus documents), Mr Mishakov resorts to alleging that the note of the meeting is "*entirely made up*" and that it represents a "*pure fabrication*".[545] Mr Mishakov does, however, accept that he met with Mr Philippides on 21 January 2002: his allegation therefore is that Mr Philippides deliberately produced a false record of a genuine meeting. The obvious, and unanswered, question is: why?

333. Another very important exchange took place between Mr Philippides and Mr Mishakov in July 2002. On 8 July 2002, Mr Mishakov sent two draft documents to Mr Philippides.[546] The first was a Call Option Agreement, expressed to be dated 20 September 1999, and under which Mr Cherney purportedly granted Mr Deripaska a call option to purchase 10,482,965,692 shares in Sibal for US$150,335,560. The second was dated 2 February 2000 and purportedly recorded the sale of those shares pursuant to the option. According to the covering email from Mr Mishakov, these documents were necessary for the purpose of the audit of Rusal. In response to Mr Mishakov's email Mr Philippides stated that the two documents did not reflect the full extent of the agreement which had been reached between Mr Cherney and Mr Deripaska on 10 March 2001:[547]

"*Dear Stalbek*

I have reviewed the documents that you have sent me regarding the sale of MC's 17.5% stake in Siberian Aluminium.

Under an agreement dated 1 March 2001 and a subsequent amendment of 10 March 2001 [sic] between MC and OD, MC agreed to sell his shareholding for a purchase consideration that was determined as follows:

a) settlement of the loans granted by Bluzwed Metals Ltd for the amount of US$150 million. We are aware that approximately US$130 million was paid in the settlement of the loans to date and that the proceeds were re-lent to OD controlled entities and are due for repayment.
b) initial payment of US$100 million that was subsequently realised through a transaction that was effected through Hillgate during 2001 and involved the purchase of shares in OJSC United Company Siberian Aluminium from a Russian entity and their immediate sale to GSA (Cyprus) Ltd, an entity controlled by OD. This transaction resulted in a profit of approximately US$91 million.
c) a further amount based on the market value of Russian Aluminium (RusAL), Sibirskiy Aluminium's successor, calculated as 20 per cent of the market value of Russian Aluminium less US$250 million. The market value is to be calculated as the average price of shares sold to third parties. The payment is to be settled within five years of the date of the agreement.

545 Mishakov1, para 111 {8A/20/376}
546 {28/1/134} - {28/1/147}
547 {28/1/148} - {28/1/149}

The agreements that you have sent to me effectively state that the shares are sold at an amount of US150,000,000 and make no reference to the other parts of the transaction …".

334. Mr Mishakov replied on the same day stating that he would revert later with his comments. Subsequently, it appears that Mr Mishakov spoke to Mr Zangoulos and said that he did not have any knowledge of any agreement by Mr Deripaska to pay Mr Cherney anything more than the US$250 million under Agreement No 1.

335. It is simply not credible that Mr Mishakov, a lawyer working within Mr Deripaska's group and one of his closest aides, would not have known about Supplement No 1 or would not have asked Mr Deripaska about it or about what Mr Cherney was saying via Mr Zangoulos. For present purposes, however, and prior to cross-examination, the following points bear emphasis:

1) In his jurisdiction statement Mr Deripaska claimed that (a) the document referred to above made no mention of Mr Cherney having a "20% interest in Rusal" and (b) Mr Mishakov had confirmed to him that the exchanges related exclusively to the payment of the US$250 million.[548]

2) The terms of the documents speak for themselves. Mr Deripaska is wrong, as is Mr Mishakov if he provided this confirmation.

3) Mr Mishakov in his First Witness Statement (at paras. 109-110) does not appear to maintain the position adopted in Mr Deripaska's jurisdiction statement. He simply does not engage with the reference to the payment due pursuant to Supplement No 1. However, he does make it clear that he referred the email from Mr Philippides to Mr Deripaska.

4) Mr Deripaska has simply ignored the Philippides exchange in his Third and Fourth Witness Statements.

5) It is clear, however, that Mr Deripaska, contrary to the impression sought to be given in his jurisdiction statement, was on any view fully aware that in July 2002 Mr Cherney was seeking payment of 20% of the value of Rusal less US$250 million pursuant to Supplement No 1.

6) That therefore prompts the questions not only as to why Mr Deripaska has failed to engage with this obviously important episode, but also why, in the light of the exchange between Mr Philippides and Mr Mishakov in July 2002, Mr Deripaska did not take the matter up with Mr Cherney or the alleged OCG representatives whom he had dealt with following Mr Malevsky's death or produce any denial of Mr Cherney's entitlement to be paid anything under Supplement No 1?

548 Deripaska1, para 37 {8/2/13}

7) Further, why on Mr Deripaska's case did he continue to pay instalments of the final *dolya* payment that he had agreed with Mr Malevsky in the period after July 2002? In circumstances where Mr Deripaska knew that his attempts to terminate the *krysha* had not been successful – because Mr Cherney was claiming an entitlement to be paid under Supplement No 1 in addition to the US$250 million which he had already received – what was Mr Deripaska hoping to achieve?

Events in 2003

336. In or around January 2003, Mr Cherney asked Mr Makhmudov to liaise with Mr Deripaska with a view to obtaining a document that recorded more fully the terms of the agreement reached on 10 March 2001.[549] For this purpose, Mr Cherney asked Mr Batkov to send a copy of Agreement No 1 and Supplement No 1 to Mr Makhmudov. The fax records show that Mr Batkov did so on 28 January 2003.[550] It is highly significant, given the suggestions made at the jurisdiction stage by Mr Hauser that Mr Cherney must have inserted his signature on Supplement No 1 sometime during late 2006 or early 2007,[551] that the copy of Supplement No 1 which was faxed by Mr Batkov to Mr Makhmudov bore the signatures of both Mr Cherney and Mr Deripaska. This corroborates Mr Cherney's evidence (set out above) that he signed Supplement No 1 at the Lanesborough Hotel on 10 March 2001 and then, later that same month, gave the original to Mr Batkov for safe-keeping.

337. In the middle of 2003, Mr Cherney and Mr Deripaska met at the Ana Grand Hotel in Vienna. It is common ground that this meeting took place. According to Mr Cherney, he showed Mr Deripaska a copy of Supplement No 1 and said that he wanted to receive the value of 20% of Rusal.[552] In response, Mr Deripaska told him not to worry because there was still time. It can be inferred that this was a reference by Mr Deripaska to the fact that under the terms of Supplement No 1 he still had time in which to perform his obligations. Mr Deripaska denies that such a conversation took place.[553]

338. According to Mr Cherney, at around the same time as this meeting in Vienna, the aluminium company Sual made an offer to pay US$3 billion for the 50% of Rusal that was then owned by Mr Cherney, Mr Deripaska, and their partners.[554] Mr Cherney says that he asked Mr Deripaska to consider this offer and he told him that he would be prepared to accept US$1 billion for his interest. Mr Deripaska, however, refused to sell and assured Mr Cherney that he would perform his obligations under Supplement No 1. What Mr Cherney did not know at the time was that Mr Deripaska was already in discussions with Mr Abramovich about purchasing the other 50% of Rusal.

549 Cherney6, para.356 {7A/6/345}
550 {18D/1/271A} - {18D/1/271B}
551 Hauser4, para.95 {8/3/51}
552 Cherney6, para.358 {7A/6/346}
553 Deripaska3, para 531 {8B/27/704}
554 Cherney6, para 350 {7A/6/341}

339. Following these events, Mr Cherney sent a document to Mr Deripaska entitled "*Supplement*". This provided as follows:[555]

> "*1. Party 2, before 31 March 2003, should perform assessment of Russian Aluminium including all the company assets. Starting from 1 April 2003, Party 2 should perform all necessary steps in order to realise the 20% stake of shares owned by Party 1 at the price at the time of sale, or in order to achieve a better result, all 50% joint stake of shares owned by Siberian Aluminium.*
>
> *2. Each party has a right to acquire the partner's shares at a price calculated on the basis of the offer price established with a third party in relation to the whole joint 50% stake*".

340. Mr Cherney's aim in sending this document to Mr Deripaska was either to accelerate the latter's obligation to pay him for his 20% share of Rusal or alternatively to require him to sell the entire 50% of Rusal that belonged to the former owners of Sibal. Mr Cherney's evidence is that after Mr Deripaska received this document, Mr Deripaska called him and gave a further assurance that he would definitely perform his obligations under Supplement No 1. For his part, Mr Deripaska denies that he ever received this document. Mr Cherney's secretary, Ms Skir, confirms that she typed the document and sent it by fax to Mr Deripaska's secretary.[556]

341. On 16 September 2003, Mr Arik Kislin sent Agreement No 1 and Supplement No 1 to Stuart Gross, a lawyer in the US who was acting for Mr Cherney at the time. As Mr Gross explains in his evidence, Mr Kislin asked him to provide advice in relation to those documents: specifically, Mr Kislin was interested in whether the terms of Supplement No 1 meant that, if the shares of Rusal were sold for a nominal amount to a related party, this would result in only a nominal sum being paid by Mr Deripaska to Mr Cherney.[557] Again, it is relevant to note that the copy of Supplement No 1 which was faxed by Mr Kislin to Mr Gross bore the signatures of <u>both</u> Mr Cherney and Mr Deripaska.

<u>Events in 2004</u>

342. In his Third Witness Statement, Mr Deripaska stated as follows:[558]

> "*Sometime in 2004 (I do not recall the date and the date on my copy is torn off), my office received a copy of Agreement No 1 and Supplement No 1, together with English translations of those documents, from the office of Mr Batkov's law firm. The copy of Supplement No.1 sent was unsigned by 'Party 1', although I understand my signature on it is identical to that on the fully signed printout which Mr Cherney alleges he signed in London on 10 March 2001, and which Mr Batkov in his evidence has claimed he received from Mr Cherney towards the end of March 2001*".

343. Mr Deripaska disclosed the fax in question.[559] The first page of the fax (which would, it can be

555 {18F/1/497}
556 Skir2, para 27 {7E/36/1148}
557 Gross1, para 24 {7D/23/976}
558 Deripaska3, para 532 {8B/27/704}

inferred, have contained the cover sheet, making clear from and to whom it was sent) is missing. In addition, the header of the fax is imcomplete. It does indicate, however, that the fax was six pages long, and that the second to sixth pages were faxed at 11:59 – 12:01 on an unknown date in 2004. In the light of Mr Deripaska's evidence, Mr Batkov has checked his surviving fax records for 2004 and has found only one outgoing fax which meets that description, which was sent from his office on 7 July 2004, to the Hilton Hotel in Tel-Aviv. Mr Batkov says that it is likely that the fax was sent to the Hilton Hotel on Mr Cherney's instructions. At this remove, however, he cannot recall his discussions with Mr Cherney.[560]

344. In response to a Request for Further Information in relation to the 2004 fax, Mr Deripaska has now told a different story:[561]

> "*… the copies referred to by the Claimant in this request were found in a box of documents relating to the Defendant's office during disclosure searches undertaken on his behalf. The Defendant assumed that they had originally been sent by fax to his office. However, the Defendant has now examined the copy documents and … is able to recall how he came to receive these documents.*
>
> *These copy documents were given to him by Father Tikhon at the Sretenskiy Monastery in Moscow at around Easter 2005 or possibly 2006 … Father Tikhon told the Defendant that he had received the documents from a former member of the Presidential administration, who had asked Father Tikhon to pass these documents to the Defendant and to warn the Defendant that copies of these documents were being circulated within the President's administration in order to damage the Defendant … The Defendant does not know how copies of these documents came to be circulated within the President's administration, but assumes they must have emanated from the Claimant or others associated with him. The earlier information given, and statements made, in relation to the receipt of these documents was thus mistaken*".

345. On any view, this is an extraordinary explanation. The precise circumstances in which Mr Deripaska came to obtain the 2004 fax will be explored in cross-examination. It should be noted, however, that even assuming that Mr Deripaska did receive the document from Father Tikhon as he now says, this gives rise to a number of questions. For example, what discussions took place about the agreement between Mr Deripaska and the Presidential administration (bearing in mind Mr Deripaska's close connections to President Putin)? More importantly, why did Mr Deripaska not contact Mr Cherney and repudiate the existence of the agreement? And why has none of this been mentioned previously by Mr Deripaska?

<u>Events in 2005</u>

346. In 2005, a further meeting took place between Mr Cherney and Mr Deripaska in Kiev. Mr Cherney says that Mr Deripaska provided with him an update in relation to the TWG litigation and said that he was expecting shortly to reach a settlement with TWG, following which he would perform his

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559 {18D/1/275AJ}
560 Batkov4, paras 18-22 {7D/14/855} - {7D/14/856}
561 {2A/17/498} - {2A/17/499}

obligations to Mr Cherney under Supplement No 1.[562] According to Mr Cherney, Mr Deripaska asked how much money Mr Cherney would be willing to accept for his share in Rusal. Mr Cherney then asked what the value of 100% of Rusal was, at which point Mr Deripaska asked why Mr Cherney felt entitled to be paid by reference to the total value of the business. Mr Cherney's response was to refer to the amounts which (a) Sual had offered in 2003 and (b) Mr Deripaska had paid to Mr Abramovich in 2004 to buy out his interest in Rusal. Mr Deripaska said that he would discuss this issue again with Mr Cherney after he had reached a settlement agreement with TWG.

347. For his part, Mr Deripaska gives a very different account of the meeting in Kiev. In particular, he says that Mr Cherney "*staged an apparently chance meeting*" with him and (for reasons that are unexplained, given Mr Deripaska had apparently by then terminated the *krysha* relationship four years earlier) that he "*reluctantly agreed to meet with him on the way to the airport*".[563] Mr Cherney did not mention Supplement No 1 but said that he needed more money; Mr Deripaska's response was to say that he had already paid Mr Cherney off and that he would therefore not pay any more.

348. Once again, the Court will have to determine whose version of events is truthful.

Events in 2006

349. Reference has already been made to the letter before action which was sent by Dr J Weinroth & Co on 14 May 2006.[564] A number of points about this letter are common ground:

1) There is no doubt that Mr Deripaska received the letter.[565]

2) The copy of Supplement No 1 attached to the letter bore only the signature of Mr Cherney. As set out above, such a document probably came into existence on 10 March 2001 when Mr Deripaska took a copy of Supplement No 1, signed by him, to lunch with Mr Cherney. The likelihood, therefore, is that the document attached to the letter before action was a photocopy of that version of Supplement No 1.

3) Mr Deripaska instructed Mr Hauser to advise him in relation to it.[566]

4) No response was sent to the letter by or on behalf of Mr Deripaska.

350. Mr Deripaska has sought to justify his failure to respond. He claims that he regarded the letter as a "*further attempt by Mr Cherney to put illegitimate pressure*" on him and that he had "*no intention of*

562 Cherney6, para 362 {7A/6/348}
563 Deripaska3, para 532 {8B/27/704}
564 {18D/1/279}
565 Deripaska3, para 534 {8B/27/704}
566 Hauser4, para 92 {8/3/51}

giving any indication that that tactic was working".[567]

351. This is absurd. It is Mr Cherney's case that Mr Deripaska's failure to respond – especially in circumstances where he had sought legal advice – proves beyond doubt that Supplement No 1 represented an agreement that he had reached with Mr Cherney on 10 March 2001. Otherwise Mr Deripaska would certainly have replied, giving what would in such circumstances have been the obvious response. As Mr Justice Christopher Clarke observed: "*Mr Deripaska's evidence is that he saw no reason to dignify Mr Cherney's unfounded claims with a reply. Since, however, this was a claim worth several billion dollars, some reply might be expected, at any rate if it was bad*".[568]

567 Deripaska3, para 534 {8B/27/705}
568 [2008] EWHC 1530 (Comm) at 123(g) {4/1/28}

L. ANALYSIS OF THE AGREEMENT AND THE RELIEF SOUGHT BY MR CHERNEY

352. The Court will be best placed to analyse the Agreement, the question of what its governing law is and what are Mr Cherney's rights under it, following the conclusion of the evidence.

353. Plainly if the Court concludes that the Agreement was, as Mr Deripaska alleges, a sham transaction that was intended to disguise the payment of illegal protection monies then the exercise of construing the Agreement will be academic.

354. This Section therefore proceeds on the assumption that the Court accepts Mr Cherney's evidence that (a) what was discussed at the Lanesborough Hotel was a buy-out of Mr Cherney's interest in the joint aluminium business and (b) the Agreement was intended by the parties to be legally binding. In that event, it will remain necessary for the Court to consider whether the Agreement is enforceable under its proper law.

355. The choice of law issues that arise in respect of the Agreement are considered briefly below. It is Mr Cherney's case that, save for the question of proprietary relief, little of substance turns on whether the Agreement is governed by English, Liechtenstein, or Russian law: although each of those legal systems might characterise the Agreement differently, they all recognise that Mr Deripaska undertook to pay Mr Cherney the value of 20% of the shares in Rusal and that Mr Cherney is entitled to relief on that basis.[569]

356. For his part, Mr Deripaska denies that the Agreement is enforceable even on Mr Cherney's own case. In other words, Mr Deripaska contends that even if the Court rejects his entire case as to the existence of a *krysha* relationship, nevertheless Mr Cherney's claim must fail because of certain infelicities in the drafting of Agreement No 1 and Supplement No 1. Given that Mr Deripaska himself drafted those documents – and if his primary case is rejected, the documents will fall to be approached on the basis that they were intended to record a genuine transaction between two businessmen – this is a most unmeritorious position. In any event, for the reasons explained below the objections raised by Mr Deripaska, which are said to apply whatever law governs the Agreement, are misconceived.

357. This Section proceeds as follows:

1) First, Mr Cherney provides the Court with an overview of the Agreement and an explanation as to how it should be construed.

2) Secondly, Mr Cherney responds to the various objections which Mr Deripaska has raised as

[569] It is not proposed, at this stage and in these opening submissions, to seek to introduce the foreign law expert evidence to the Court.

to the enforceability of the Agreement.

3) Thirdly, some key points are made regarding the relief sought by Mr Cherney.

4) Finally, some brief observations on choice of law are made.

The Agreement

The position of the parties at the time of the Agreement

358. It is Mr Cherney's case that:

1) In or around June 1997 he and Mr Deripaska agreed that all the aluminium assets of their partnership would be held through Radom or by the partners in Radom.

2) When the aluminium business was re-structured in 1999 and Sibal was established, he and Mr Deripaska agreed that Sibal would be held by Radom or by the partners in Radom.

3) Mr Deripaska was given the responsibility of implementing the re-structuring and he never informed Mr Cherney that he had not done so. Accordingly, at all times between 1999 and the merger with Sibneft, Mr Cherney assumed that Sibal was controlled and effectively owned by Radom or by the partners in Radom.

359. Although the documentary records relating to Radom and Sibal are incomplete, there is evidence which shows that Mr Cherney's understanding as to the ownership of Sibal was substantially correct: Radom did in fact hold a number of entities which, in turn, held shares in Sibal. Moreover, although some shares in Sibal were held by entities established and/or controlled by Mr Deripaska that were outside Radom, those entities were themselves beneficially owned by Mr Cherney and Mr Deripaska (but not by the "minority" partners introduced by Mr Deripaska into Radom, Mr Malevsky and Mr Popov).[570]

360. The Court is referred to Annex 5 to these submissions for a table which shows the ownership structure of Sibal in 1999. For present purposes, the Court is asked to note from the table that prior to the conclusion of the Agreement: a significant percentage (36.52%) of Sibal appears to have been held by entities within the Radom structure; and, the overwhelming majority of Sibal (85.37%) appears to have been held either by entities within the Radom structure or by other entities under the joint ownership and/or control of Mr Cherney and Mr Deripaska.

361. It is against this background that Mr Cherney contends that, irrespective of how the joint interests

[570] The most significant such entity was LLC Aluminproduct the assets of which were later transferred to SA Holding. Those entities were held by nominees on behalf of Mr Cherney and Mr Deripaska outside of the Radom structure.

were in fact held immediately prior to the Agreement (i.e. irrespective of whether Mr Deripaska had transferred the entirety of Sibal into Radom in accordance with the parties' earlier agreement), it was nevertheless understood and intended by the parties at all material times that Mr Cherney was entitled to an interest in 40% of the shares in Sibal.[571]

The terms of the Agreement

362. It is common ground that Agreement No 1 and Supplement No 1 were both drafted by Mr Deripaska himself. The inevitable result is that neither document is a model of drafting. Nevertheless, the overall commercial purpose of the Agreement and the outcome ultimately intended by the parties is clear: Mr Cherney agreed to sell his stake in their joint aluminium business in exchange for which Mr Deripaska undertook to pay Mr Cherney the value of 20% of the shares in Rusal, including an advance payment of US$250 million.

Translation issues

363. Both parties have served expert evidence as to the correct translation of both Agreement No 1 and Supplement No 1.[572] Whilst there do remain (limited) differences between them (at least so far as genuine translation issues are concerned), they have, as part of their Joint Memorandum, produced agreed translations of both Agreement No 1 and Supplement No 1.[573] Those agreed translations have been prepared on basis that '*is as close to the underlying Russian text as possible*'.[574] Issues arising in relation to the translations (and "the Translation Principle") will have to be explored at trial. For the purposes of these opening submissions, reference is made below to the agreed translations.

Agreement No 1

364. Agreement No 1 provided for the transfer by Mr Cherney of 17.5% of the shares in Sibal to Mr Deripaska in consideration for which Mr Deripaska agreed to pay US$250 million. The following terms of Agreement No 1 merit brief consideration:

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571 Mr Cherney contends that Mr Deripaska is estopped from relying upon his failure to incorporate the aluminium assets within Radom pursuant to their earlier agreements to that effect and that, in any event, the parties understood and acted on the basis that the parties were entitled to a share in the joint aluminium interests in accordance with their respective shares in Radom: see the Re-Re-Amended Reply at para 3(11) {2/5/50} - {2/5/51}

572 The reports of Ms Edwards and Professor Konurbaev can be found in bundle 15

573 The Joint Memorandum, with the agreed translations, is at {10/1/1} - {10/1/12}

574 See paragraph 3.1 of the Joint Memordandum at {10/1/2} - {10/1/3} : "*Given that the Court's tsask in this case is to construe Agreement No 1 and Supplement No 1 and to decide what their nature, meaning and effect is, we considered that it was appropriate for us, as translators, to provide the Court with an English translation of the documents which is as close to the underlying Russian text as possible. We have sought to agree upon a translation which shows as clearly as possible the structure and the contents of the documents in question, as well as being supplemented by an analysis of the areas where the meaning of these documents is unclear or ambiguous from a linguistic point of view. We refer to this – our decision to stay as close to the linguistic structure of the original Russian documents as possible in this Joint Memorandum – as the Translation Principle*".

1) According to Clause I.1, the stated purpose of Agreement No 1 was to govern "*issues of the management of shares in u.c. Sibirskiy Aluminiy, owned by Party 1*". Party 1 was Mr Cherney.

2) Under Clause II the parties undertook the following: "*Party 1 will sell 17.5% of the shares in U.C. Sibirskii Aluminii to Party 2 at a preliminary price of $100,000,000*" and "*Party 2 ensures that the accounts payable [of/by] u.c. Sibirskiy Aluminiy to the company Bluzwed are repaid in a total amount of $150,000,000, including interest for the benefit of Party 1*". As already explained, the figure of 17.5% was chosen by Mr Deripaska and Mr Cherney was not interested in the quantum of his interest in Sibal which was to be transferred under the Agreement because at all events it was understood that he would ultimately be divested of his entire interest in the joint aluminium business.[575] Although Mr Cherney's evidence will be that at the time of the Agreement he did not understand why Mr Deripaska inserted the figure of 17.5% rather than 40%, one possible explanation is that the merger of Sibal/Sibneft took place in two stages and 17.5% equates to approximately 40% of the share in Sibal that was still held by Radom as at March 2001 (17.38%).[576]

3) The overall effect of clauses II.2 and II.4 of Agreement No.1 was that US$250 million was to be paid by Mr Deripaska within one year. Mr Cherney, again, was not concerned with the mechanism by which that payment was made.[577]

365. There is no dispute that Agreement No 1 has been fully performed albeit not until 8 April 2002 and in a different manner to that which was contemplated in Agreement No 1. For present purposes, Mr Cherney is prepared to adopt the description in Schedule 1 to the Amended Defence save that obviously Mr Cherney contends that he (rather than Mr Deripaska) was the beneficial owner of the shares in Sibal which were transferred from Siberian Investment Company to Hillgate Financial Corporation and then to GSA (Cyprus) Limited.

Supplement No 1

366. Supplement No.1 is a very short document which provides as follows:

> "*Pursuant to Agreement No 1 dated 10th March 2001*
> *The Parties agreed on the following:*
> *Party 2 must begin to sell shares in the company Russkiy Aluminiy to third persons within three years from the moment of the start of the performance (but not later than five years)*

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575 Cherney6, para 343 {7A/6/338}

576 Part III of the Amended Share Purchase Agreement {42/1/131} - {42/1/160} concluded between Mr Deripaska and Mr Abramovich provided for GSA Cyprus (on behalf of the Radom group) to transfer 50% of: (i) 46.85% of Sibal (ii) 82.631% of SIK which, owing to fact that SIK in turn owned 48.5% of Sibal, corresponded to 40.08% of Sibal. Thus a total of 43.46% (i.e. 50% of 86.93%) of Sibal was to be transferred under SPA, with the Radom group retaining 43.46%. Mr Cherney's 40% share in the interest to be transferred (and, indeed, the interest retained), was thus 17.38%.

577 Cherney6, para 343 {7A/6/338}

*after the complete performance of the present Agreement; Party 2 shall pay Party 1 a sum equal to (Z*20-US$250,000,000), where Z is the value of one per cent of [the] shares of the company Russkiy Aluminiy. If in the course of three years several deals are concluded for the sale of shares to third persons, Z is calculated as the average for all the sale deals up to the sale of 20% of [the] shares.*

Party 2 shall pay Party 1 the sum due to it within six months of the moment of sale of [the] shares".

367. It may be helpful to set out Mr Cherney's case as to how Supplement No 1 should be construed. For this purpose, it is highly relevant to note that, as set out above, Mr Cherney's evidence will be that he was told by Mr Deripaska at the Lanesborough Hotel that Mr Deripaska did not have the funds immediately available to purchase the entirety of Mr Cherney's interest in their joint business. In other words, by the terms of Supplement No 1 what the parties were attempting to achieve was a set of mechanics which gave Mr Deripaska time to pay Mr Cherney for his interest. Against that background, Supplement No 1 was intended to operate as follows:

1) The overall obligation on Mr Deripaska was to pay Mr Cherney the market value of 20% of the shares in OJSC Russky Alyuminiy. Hence "*the Second Party shall pay the First Party a sum equal to (Z*20-US$250,000,000), where Z is the cost of one per cent of the shares of the company Russky Alyuminiy*".

2) OJSC Russky Alyuminiy was the only entity which existed as at March 2001 for the purpose of holding the assets of the merged Sibal/Sibneft business. However, in order to give effect to the commercial purpose of Supplement No 1, Mr Cherney will invite the Court to construe the reference to OJSC Russky Alyuminiy in such a way as to include any other vehicle that might subsequently have been used for the purpose of holding the combined Sibal/Sibneft aluminium interests following the merger (not least to avoid a position in which Mr Deripaska could destroy the obvious commercial purpose of Supplement No 1 by changing the identity of the entity or entities holding the combined business).

3) Mr Deripaska was to "*begin to sell shares*" in Rusal "*to third persons within three years from the moment of the start of the performance (but not later than five years) after the complete performance of the present Agreement*". The reference to "*the present Agreement*" is to Agreement No 1 and "*performance*" is therefore performance of the parties' obligations under Agreement No 1. Accordingly, Mr Cherney will invite the Court to construe Supplement No 1 as requiring Mr Deripaska (a) to start selling shares to third parties within 3 years of the date on which performance of Agreement No.1 commenced (i.e. 21 April 2004) and (b) to complete that exercise within 5 years from the time of the complete fulfilment of Agreement No 1 (i.e. 7 April 2007).

4) The purpose of Mr Deripaska making sales to third parties was in order to provide a mechanism for determining the price to be paid by him to Mr Cherney. In particular, the

effect of the formula in Supplement No 1 was to impose upon Mr Deripaska an obligation to procure the payment to Mr Cherney of a sum equal to 20 x the cost (based on the sales to third parties) of 1% of the shares in Rusal ("Z"), less the advance payments of US$250 million. The formula could operate in different ways. For example:

a) If Mr Deripaska sold 20% of the shares to a single third party as part of a single transaction, this would result in him accounting for the sale proceeds (less the US$250 million) to Mr Cherney.

b) However, in the event of Mr Deripaska making several sales of shares – to more than one third party and/or at different times – Z was to be calculated by taking an average of the cost of those sales.

368. The sum due pursuant to the arrangements described above was to be paid by Mr Deripaska to Mr Cherney within 6 months of the shares being sold, and in any event within 6 months of the last date for realisation of the sales.

369. In the event that Mr Deripaska failed to sell all or some of the shares, Z was to be calculated by taking an average of the cost of sales (if any) and the market price at the latest date for realisation of the said sales.

370. In the event that Mr Deripaska did not wish to sell any or all of the 20% of the shares to third parties, he would be able to retain them for his own benefit albeit that he was required to pay Mr Cherney the market value of those shares.

371. On account of the terms agreed orally by Mr Cherney and Mr Deripaska, Mr Deripaska would hold 20% of the shares in Rusal on trust for and on behalf of Mr Cherney pending payment of the value thereof in accordance with the formula provided in Supplement No 1.

372. It is common ground that if Supplement No 1 is found by the Court to have been an agreement entered into by Mr Cherney and Mr Deripaska then it has not been performed. Indeed, Mr Deripaska has made repeated public announcements since March 2001 denying that he owes anything to Mr Cherney.

Objections raised by Mr Deripaska

373. In his Amended Defence, Mr Deripaska has pleaded three main objections to the enforceability of the Agreement on account of which he says that Mr Cherney's claim must fail even if the Court finds that there was no *krysha* relationship. The objections, and Mr Cherney's responses thereto, are as follows.

Sham transaction / no commercial sense

374. First, Mr Deripaska contends that the Agreement is a sham transaction because Agreement No 1 refers to a sale by Mr Cherney of 17.5% of the shares in Sibal whereas Supplement No 1 refers to 20% of the shares in Rusal.[578] Mr Deripaska also makes a related point, which is that if under Agreement No 1 Mr Cherney had sold a 17.5% shareholding in Sibal then Mr Cherney would have been entitled to 11.25% rather than 20% of Rusal. Accordingly, it would not have made any commercial sense for Mr Deripaska to agree under the terms of Supplement No 1 to pay the value of 20% of the shares in Rusal.[579]

375. Both of these objections are devoid of merit. In circumstances where Mr Deripaska himself inserted the figure of 17.5% into Agreement No 1, there is no question of the Agreement constituting a sham transaction. Put simply, Mr Deripaska cannot establish that there was a common intention to avoid entering into a legally binding agreement. As to the complaint about the lack of commercial sense, this misunderstands the nature and purpose of the Agreement. The 40% interest in Sibal owned by Mr Cherney and the 20% interest in Rusal to which he would have been entitled following the completion of the Sibal/Sibneft merger were two sides of the same coin. The parties agreed that Mr Cherney would sell his entire interest in the aluminium business in return for which Mr Deripaska would pay him the value of 20% of the shares of Rusal less the US$250 million that Mr Deripaska agreed to pay in advance. Viewed objectively, that is a transaction which makes eminent commercial sense. The fact that Mr Deripaska believed that providing for the transfer of 17.5% of Sibal sufficiently achieved this object, perhaps because he had already committed the other shares to the Sibal/Sibneft merger in any event, is not a matter which he can rely upon to avoid paying the amount due.

Uncertainty

376. Secondly, Mr Deripaska claims that the Agreement is void for uncertainty.[580] In particular, he says that it is impossible to establish from the terms of Supplement No 1 the number of shares to be sold, the mechanics of the sale, or the time period during which Mr Deripaska was to start and finish selling the shares. In fact, however, there is nothing uncertain about the terms of Supplement No 1: as set out above, Mr Deripaska was to pay to Mr Cherney the value of 20% of the shares of Rusal in return for the performance of Agreement No.1, such value to be ascertained by virtue of the sales made by Mr Deripaska to third parties; and as regards timing, Mr Deripaska was obliged to start selling shares to third parties by 21 April 2004 at the latest and to complete that exercise by 7 April 2007.

578 Para 12A of the Amended Defence {2/4/27}
579 Para 12.3 of the Amended Defence {2/4/26}
580 Paras 22, 26.2A, and 26A.3 of the Amended Defence {2/4/32} , {2/4/36} & {2/4/38}

The Agreement did not impose any obligation upon Mr Deripaska

377. Thirdly, Mr Deripaska now contends that the Agreement did not actually impose any obligation upon him; rather, he claims that the combination of the Russian words "*dolzhna*" and "*nachat realizovyat*" in Supplement No 1 are to be read as meaning that "*if and only if Mr Deripaska elected to sell the shares in question to third parties, he would then be obliged to make payment as described in the document*".[581] As noted, the Court will hear expert evidence in due course on the correct translation of Supplement No 1 from Russian into English. Neither expert's translation has (to date at least) accorded with Mr Deripaska's late evidence of his subjective intent. For present purposes, it is sufficient to note that Mr Cherney's case is that:

    1) Under the terms of Supplement No 1 Mr Deripaska was obliged to pay Mr Cherney the value of 20% of the shares of Rusal and Mr Cherney was entitled to be paid the same.

    2) It was not open to Mr Deripaska to defeat Mr Cherney's entitlement under Supplement No 1 by not selling any shares.

    3) On the contrary, in the event that Mr Deripaska failed to sell the shares, "Z" was to be calculated by taking the market price at the latest date for realisation of the said sales.

Relief sought by Mr Cherney[582]

378. As already explained, at the date of the Agreement OJSC Russky Alyuminiy was the only vehicle that had been created in connection with the Sibal/Sibneft merger.

379. In fact, based on the evidence of Mr Deripaska and Mr Mishakov[583] the position appears to have been that OJSC Russky Alyuminiy held the assets of the merged business but the trading was conducted through Rual Trade Limited (formerly Runicom Limited), which had previously been one of Mr Abramovich's entities. In 2003, Rusal Holdings Limited was incorporated so as to consolidate OJSC Russky Alyuminiy and Rual Limited. In 2007, Rusal Holdings Limited merged with the businesses of Sual and Glencore and it acquired a 66% stake in the newly formed entity United Company RUSAL.

380. As set out in his draft Re-Re-Amended Particulars of Claim, Mr Cherney seeks relief on two alternative bases.

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581 Paras 22B, 26.2B, and 26A.4 of the Amended Defence: {2/4/33} , {2/4/36} & {2/4/38} . This plea is, it is assumed, based on Deripaska4, paras 330-332 {8F/64/1699} - {8F/64/1700} .

582 These opening submissions reflect Mr Cherney's case as set out in his draft Re-Amended Particulars of Claim and draft Re-Re-Re-Amended Reply, which will be served on the Defendant as soon as practicable. Mr Cherney also intends to serve an amended version of his Response to the Defendant's Request for Further Information dated 1 June 2012.

583 {8B/27/556} ; {8A/20/343}

381. First, Mr Cherney claims that because he and Mr Deripaska orally agreed that Mr Deripaska would hold 20% of the shares in Rusal for his benefit pending payment of the value thereof, and because no such payment has been made, he is entitled to proprietary relief either in the form of a trust under English law or alternatively on the basis that the Agreement constitutes a fiduciary mandate agreement under Liechtenstein law. It is common ground that if, contrary to Mr Cherney's case, Russian law is found to govern the Agreement then there is no question of proprietary relief.

382. In respect of this claim the relief sought is:

1) A declaration that Mr Deripaska holds (directly or indirectly) 20% of the shares in Rusal, and now 20% of the 66% shareholding in United Company Rusal either on trust for Mr Cherney (if English law applies) or on behalf of Mr Cherney pursuant to a fiduciary mandate agreement if Liechtenstein law applies. Mr Cherney seeks an order requiring Mr Deripaska to sell the shares and to account to him for the proceeds thereof.

2) A declaration that any dividends received by Mr Deripaska that are referable to those shares and/or any assets acquired by Mr Deripaska using those shares are similarly held on trust for or otherwise on behalf of Mr Cherney. Mr Cherney seeks an account of the same.

3) An inquiry into what sums are due to Mr Cherney pursuant to the aforesaid declarations, together with an account of the same.

383. Further, by reason of Mr Deripaska's breaches of the Agreement, Mr Cherney claims damages representing any additional sums that he would have received if the shares had been sold by Mr Deripaska in accordance with the Agreement.

384. Alterntively,[584] Mr Cherney claims that Mr Deripaska has breached the Agreement and that he has suffered loss and damage as a result. Although the issue of quantum has been deferred to a second stage of the trial, it will be necessary for the Court to determine at this stage the principles according to which such damages fall to be assessed. In this respect, it will be Mr Cherney's case that:

1) His damages are at least an amount representing the market value of 20% of the value of Rusal assessed at the relevant date, less the US$250 million that was paid by Mr Deripaska under Agreement No 1.

2) His damages fall to be assessed as at the last date on which Mr Deripaska was entitled to perform his obligations under Supplement No 1, i.e. 7 April 2007, or alternatively on the date on which his claim was issued, i.e. 24 November 2006.

[584] Mr Cherney recognises, of course, that there can be no question of double recovery: accordingly, if his proprietary claim succeeds, he will have to give credit for the fact that he will, on that basis, still be beneficially entitled to his interest in the shares.

3) Although Supplement No 1 refers on its face to OJSC Russky Alyuminiy, he is nonetheless entitled to damages based on the value of 20% of 66% of UCR at the aforementioned date because:

a) As set out above, the reference to OJSC Russky Alyuminiy should be construed so as to include any other vehicle that might have been used for the purpose of holding the combined Sibal/Sibneft aluminium interests following the merger. That would include Rual Trade Limited and Rusal Holdings Limited when that was established in 2003.

b) Alternatively, Mr Cherney will contend that the Agreement contained implied terms pursuant to which Mr Deripaska was obliged (a) to ensure that OJSC Russky Alyuminiy would be used to hold all the assets of the merged Sibal/Sibneft business and to carry out all trading activities in respect thereof and (b) not to take any steps to reduce the value of OJSC Russky Alyuminiy so as to prejudice Mr Cherney's rights under the Agreement. Insofar as Mr Deripaska failed to ensure that OJSC Russky Alyuminiy was used to hold: (i) the trading arm of the merged Sibal/Sibneft business prior to the establishment of Rusal Holding Limited; (ii) Rusal Holding Limited when that was established in around 2003; and (iii) the 66% stake in United Company Rusal that was acquired by Rusal Holdings Limited when United Company Rusal was established in around March 2007, he thereby acted in breach of the aforesaid implied term and damages fall to be assessed, and relief awarded, on this basis.

Choice of law

385. Two issues arise, one in relation to each claim: what is the law that governs the contract claim (i.e. what is the applicable law of the 2001 Agreement), and what is the law that governs the trust claim (i.e. what is the applicable law of the trust arising from the terms of the 2001 Agreement)?

386. In summary, it is the Claimant's position that the answer to both of those questions is English law. If that is wrong, and the answer is not English law, then the Claimant contends that the answer is Liechtenstein law. If that too is wrong, then the Claimant contends that the answer is Russian law. The Defendant's position is that the answer to both questions is Russian law.

387. Detailed arguments in relation to applicable law will have to be set out in due course. In brief, the Claimant's position is:

1) It was expressly orally agreed between Mr Cherney and Mr Deripaska that English law would govern the Agreement: paragraph 7 of the Re-Amended Particulars of Claim.[585] The effect of this is that both the contract claim (i.e. what is the applicable law of the Agreement) and the

[585] {2/2/6} . This is denied – see paragraph 10.8 of the Amended Defence {2/4/25} .

trust claim (i.e. what is the applicable law of the trust arising from the terms of the Agreement) are governed by English law.

2) Even were the Court not to accept that English law were expressly agreed, the contract claim is still governed by English law, pursuant to an implied choice of law alternatively because the agreement is most closely connected with England (pursuant to an application of Article 3, alternatively Article 4 of the Rome Convention, incorporated into English law by the Contracts (Applicable Law) Act 1990).[586] Alternatively, the agreement is governed by Liechtenstein law (on the same implied choice/closest connection basis). The arguments in favour of Russian law in this regard are, it is submitted both weak and superficial.[587]

3) Similarly, even if express choice of English law is rejected, the trust claim is still governed by English law, on the basis of implied choice, alternatively as the law with which the trust has the closest connection, alternatively at common law (pursuant to an application of Articles 5 to 7 of the Hague Convention on the Law Applicable to Trusts and their Recognition, incorporated into English law by the Recognition of Trusts Act 1987). Alternatively, the trust is governed by Liechtenstein law, on the same implied choice/closest connection basis). Here too, the arguments in favour of the conclusion that the trust is governed by Russian law (a system of law which, it is common ground, does not recognise trusts) are superficial and weak.[588]

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FIONN PILBROW
TONY SINGLA
JAMES WEALE

22 JUNE 2012

586 See paragraphs 8, 9 and 12 of the Re-Re-Amended Reply {2/5/55} - {2/5/58}
587 See paragraph 10 of the Re-Re-Amended Reply {2/5/57}
588 The relevant paragraphs of the statement of case are: para 7 of the Re-Amended Particulars of Claim {2/2/6} ; para 33 of the Amended Defence {2/4/40} ; and, para 23 of the Re-Re-Amended Reply {2/5/70} .

ANNEX 1 – ALLEGATIONS OF AND *KRYSHA*, CRIMINALITY AND *DOLYA*: THE DEVELOPMENT OF MR DERIPASKA'S CASE

The way in which Mr Deripaska's case has developed in relation to his allegations of *krysha*, criminality, and *dolya* is remarkable and will be relied upon by Mr Cherney to support his contention that those allegations have been fabricated after the event. The Court is invited to note, by reference to the pleadings, submissions and evidence (set out in chronological order below): the absence of key allegations at the initial stages of these proceedings; the changes in the identity of those alleged to be criminals; the introduction of new allegations at a late stage in these proceedings; the changing quantum and nature of the alleged *dolya* payments; and the numerous other shifts in Mr Deripaska's case.

ALLEGATIONS OF *KRYSHA* AND CRIMINALITY

1. Mr Deripaska's evidence to the Swiss Examining Magistrate on 17 February 2005 {31B/77/785} which was commented on by Mr Justice Christopher Clarke at paragraph 124(c) {4/1/28} .

2. Mr Deripaska's first witness statement dated 15 February 2008 at paragraphs 17-26 {8/2/8-11} .

3. The evidence submitted by Mr Cherney in March 2008 for the jurisdiction hearing to which Mr Deripaska provided no response – Mr Cherney's second witness statement at paragraphs 29-34 {7/2/113} - {7/2/114} and Ms Malevskaya's first witness statement at paragraphs 6-10 {7E/26/1010} - {7E/26/1012} .

4. Mr Deripaska's original Defence (that which constitutes amemdments in the Amended Defence is apparent on the document) at paragraphs 8.2 {2/4/22} and 26.3 {2/4/37} .

5. Mr Cherney's Part 18 Request service on 21 May 2010, in particular, Requests 19, 23, 24, 64, 65, 66, 72, 73, 78 {2/6/99} - {2/6/125} .

6. Mr Deripaska's response to Mr Cherney's requests 19, 23, 24, 64, 65, 66, 72, 73 and 78 of his request for further information (served on 21 May 2010) of 16 August 2010 {2/6/99} - {2/6/125} and, in relation to Requests 73 and 78, Mr Deripaska's response of 21 October 2010 {2/8/199} - {2/8/202} .

7. The response of Mr Deripaska's lawyers in respect of a request for clarification as to whether or not Mr Cherney was implicated in alleged assassination attempts of 24 November 2010 {2/9/214} .

8. Mr Deripaska's request for disclosure of 10 June 2011 in relation to alleged criminals at paragraph 49 {155/1/411} - {155/1/423} (at page 422) and the subsequent explanation as to their relevance of 6 July 2011 {155/1/462} - {155/1/466} (at page 465).

9. Mr Deripaska's request for disclosure of 15 August 2011 in relation to alleged criminals {155A/1/585} – {155A/1/591}

10. Schedule 1 to Mr Deripaska's disclosure application of 1 November 2011 {151A/1/464} .

11. Mr Deripaska's third witness statement of 13 December 2011 at paragraphs 120 {8B/27/587} - {8B/27/588} , 122 {8B/27/588} , 142 {8B/27/594} {8B/27/595} , 153 {8B/27/598} - {8B/27/599} ,

197 {8B/27/610} , 218.4 {8B/27/619} , 256-257 {8B/27/631} - {8B/27/632} , 263-265 {8B/27/635} , 272 {8B/27/637} - {8B/27/638} , 280-281 {8B/27/640} , 286-303 {8B/27/641} - {8B/27/646}.

12. The submissions of Mr Deripaska's leading counsel at the hearing of 14 December 2011 (pages 15-16 and 53 of the transcript) {5D/9/937} - {5D/9/938} ; {5D/9/975} .

13. Mr Deripaska's first draft amended defence of 26 January 2012 at paragraphs 8.2.1 and 8.2.3 {151B/1/534} and the following paragraphs of Schedule 3 Part 1: 2 (151B/1/514} , 5.1 {151B/1/515} , 5.5 {151B/1/517}, 5.8 (151B/1/518} , 6 {151B/1/523} – {151B/1/531} , 7 {151B/1/531} – {151B/1/533} , 8 {151B/1/533} – {151B/1/536} , and 9-11 {151B/1/536} – {151/1/540}

14. Mr Deripaska's third draft amended Defence of 17 February 2012 at paragraphs 2.3.3 {151B/1/727} and 8.2 {151B/1/694}

15. Mr Deripaska's fourth draft amended Defence of 12 March 2012 at paragraphs 2.3 {2/4/18} and 8.2 {2/4/22} and the following paragraphs of Schedule 3: 2.2 {2/4/44J) , 3 {2/4/44Q} , 13 {2/4/44R} , 18 {2/4/44T} , 42 {2/4/44AH} , 43 {2/4/44AH} , 53 {2/4/44AO} , 60 {2/4/44AQ} , 68 {2/4/44AU}

16. Mr Deripaska's fourth witness statement of 5 May 2012, in particular, paragraphs 10 {8F/64/1608} , 36-37 {8F/64/1617} , 63-65 {8F/64/1626} - {8F/64/1627} , 68 {8F/64/1628} , 214 {8F/64/1670} , 219 {8F/64/1671} , 237 {8F/64/1675} , 339 {8F/64/1701} , 351-352 {8F/64/1704} , 343 {8F/64/1702}, 344 {8F/64/1702} , 365 {8F/64/1707} , 413 {8F/64/1719} , and 517 {8F/64/1744} - {8F/64/1750} }

ALLEGED *DOLYA* PAYMENTS

1. Mr Deripaska's first witness statement of 15 February 2008 at paragraphs 20-22 {8/2/9} - {8/2/10}

2. Mr Deripaska's original Defence (that which constitutes amemdments in the Amended Defence is apparent on the document) at paragraphs 8.2 and 15.6 {2/4/22} and {2/4/29}

3. Mr Deripaska's response to requests 20, 29, 67, 68, 74 and 78 of Mr Cherney's request for further information (served on 21 May 2010) of 16 August 2010 {2/6/100} , {2/6/102} , {2/6/121} {2/6/123} , {2/6/125} and 21 October 2010 {2/8/208} - {2/8/210}

4. Mr Deripaska's third witness statement of 13 December 2011 at paragraphs 26 {8B/27/563} , 257 {8B/27/77} , 264 {8B/27/635} , 289 {8B/27/642} , 296 {8B/27/644} , 304-309 {8B/27/646} - {8B/27/648} , 372 {8B/27/665} , 377 {8B/27/666}, 385 {8B/27/669} , 405 {8B/27/674} - {8B/27/675} , 407 {8B/27/675} , 410-419 {8B/27/675} - {8B/27/676} , 454 {8B/27/685} - {8B/27/286} , 479 {8B/27/692} .

5. Witness A's first witness statement of 13 December 2011 at paragraph 109 {8D/31/982}

6. Witness B's first witness statement of 13 December 2011 at paragraphs 65 and 70 {8D/32/1049} - {8D/32/1050}

7. The submissions of Mr Deripaska's leading counsel at the hearing of 14 December 2011 (pages 5-8 of the transcript) {5D/9/927} - {5D/9/930}

8. Mr Deripaska's Amended Defence of 12 March 2012 at Schedule 4 (including Schedule 4A and Schedule 4B) {2/4/44BE} - {2/4/44BN}

9. Mr Deripaska's fourth witness statement of 5 April 2012 at paragraphs 412-413 {8F/64/1718} {8F/64/1719} , 474-484 {8F/64/1732} - {8F/64/1734} and 496 {8F/64/1737} - {8F/64/1738}

ANNEX 2 – THE SOURCE OF FUNDS USED FOR THE ACQUISITION OF SHARES IN SAAZ IN 1993 AND 1994

Date	**Number**	**Cost (US$)**	**Immediate source of funds**
03/04/93	60,000[589]	US$188,648 (est)	Kompaniya Aluminproduct (note evidence of its source but note Mr Deripaska's evidence that Kompaniya Aluminproduct usually sold to "Techsnabexport" who sold to Alpro Aluminium as the "foreign buyer" who in turn sold to the end—customer which would suggest that the source of its funds was Alpro Aluminium)[590]
19/05/93	25.245	US$55.607 (est)	Kompaniya Aluminproduct (no evidence of its source)
28/06/93	6,150	US$72,115	Kompaniya Aluminproduct (no evidence of its source)
19/07/93	10,000	US$68,293	Kompaniya Aluminproduct (no evidence of its source)
28/07/93	7,000	US$56,337	Kompaniya Aluminproduct (no evidence of its source)
27/09/93	430	US$716 (est)	Kompaniya Aluminproduct (no evidence of its source)
24/12/93	14,000	US$224,000	Alpro Aluminium (no evidence of its source)
24/12/93	2,813	US$45,008	Alpro Aluminium (no evidence of its source)
29/12/93	5,000	US$80,433[591]	Alpro Aluminium (no evidence of its source)
08/06/94	7,846	US$40,443	Kompaniya Aluminproduct (no evidence of its source)
01/07/94	6,158	US$27,115	Kompaniya Aluminproduct (no evidence of its source)
07/07/94	13,485	US$131,882	Kompaniya Aluminproduct (no evidence of its source)
15/08/94	8,496	US$49,424	Alpro Aluminium (no evidence of its source)

589 The Saaz securities report states that by 1 April 1993, Aluminproduct held 340,980 shares. During 1994, there was a share split with each old share with a value of RUB 100 split into four new shares each of par value of RUB250. Even on this basis, however, there is an inconsistency between Mr Haberman's figure and the Saaz securities report figure which would suggest 85,245 shares by 1 April 1993.

590 Deripaska3, paras 76-78 {8B/27/576}

591 On the basis of Mr Haberman's figures. the total number of shares held was 130,638 or 522,552 "new shares". The Saaz securities report states that by 1 January 1994, Aluminproduct held 520,552 shares.

Date	Number	Cost (US$)	Immediate source of funds
19/08/94	9,046	US$83,827	Alpro Aluminium (no evidence of its source)
24/08/94	2,000	US$120,336	-
30/08/94	5,412	US$127,555	Russkiy Capital
06/09/94	6,620	US$560,099	Russkiy Capital
07/09/94	90	US$1,305 (est)	-
09/09/94	4,996	US$285,719 (est)	-
12/09/94	3,366	US$190,974 (est)	-
21/09/94	10,967	US$26,807	-
21/09/94	36,997	US$42,368	-
30/09/94	15,097	US$41,352	-
18/10/94	651	US$48,016	-
14/11/94	769	US$42,218[592]	-
27/12/94	(19)	(US$1,041) (est)	-
28/12/94	(36,997)	(US$2,532,262) (est)	-
28/12/94	(4,127)	(US$383,105) (est)	Russkiy Capital
28/12/94	(769)	(US$47,371) (est)	-
28/12/94	(651)	(US$41,734) (est)[593]	-

592 As at 15 November 1994, on the basis of Mr Haberman's figures, Mr Deripaska held 1,050,536 "new" shares of whch 527,984 (4 x 131,996) were purchased in 1994 and 522,522 shares (4 x 130,638) in 1993.

593 42,563 shares were sold or 170,252 new shares. The cumulative holding by the end of the year therefore is 1,050,536 less 170,252 or 880,284.

ANNEX 3 – PAYMENTS MADE BY COMPANIES CONTROLLED BY MR CHERNEY AND USED FOR MR CHERNEY'S PARTNERSHIP WITH MR DERIPASKA FROM 1995

[82] 11/7/95	US$3,000,000 loan from Blonde to Alpro Aluminium (used as to part for the purchase of materials and processing of metals from Saaz and Company Aluminproduct). The accounts of Alpro Aluminium show short term funding from Blonde of US$2.8 million as at 31 December 1995.[594]
[83] 8/8/95	US$400,000 from Blonde to Alpro Aluminium (used to purchase shares in Saaz).
[111] 1/9/95	US$820,000 from Blonde to an account of Nash Investments at Bank Sayany of which US$120,000 was used to fund the acquisition of shares in OJSC Polevskoy Cryolite Plant and OJSC Yuzhno-Uralsk Cryolite Plant.
[113] 7/9/95	US$500,000 from Blonde to an account of Nash Investments at Bank Sayany used to acquire shares in Yuzhno-Uralsk Criolyte Plant.
[84] 6/11/95	US$1,200,000 from Blonde to Alpro Aluminium (purchase of aluminium from Aluminproduct and Saaz).
[120] 4/12/95	US$150,000 from Blonde to an account of Nash Investments at Bank Sayany some of which was transferred to Alinvest and used to buy shares in businesses linked to the Defendant, namely OJSC Polevskoy Cryolite Plant and OJSC Yuzhni-Uralsk Cryolite Plant.
[135] 4/4/96	US$5,000,000 from Blonde to an account of Nash Investments at Bank Sayany US$1.1 million put towards a guarantee of loans to Saaz.
[137] 25/4/96	US$5,000,000 paid by Blonde to Nash Investments of which US$3.4 million was paid to Bluzwed Foundation.
[275C] 8/10/96	CCT paid US$10,000,000 to Nash which was paid to Gavroche. US$6.8 million of this amount was used to fund a purchase of shares in Saaz by Gavroche on 25 December 1996.
[275D] 5/11/96	CCT paid US$2,000,000 to Maddox.
[92] 19/11/96	Blonde paid US$1,300,000 to Maddox (excluding that part used to provide finance to Gaisky GOK).
[94] 22/11/96	US$320,000 from Blonde to Maddox.
[41] 5/5/97	US$290,000 paid by Blonde to Nash Investments, part of which was loaned to Maddox.
[279K] 5/6/97	US$13 million paid from funds deriving from Mr Cherney's business with

[594] {53B/8/789}

	Mr Gliklad paid via Nash to Bluzwed Metals.
[276] 2/7/97	US$3,797,409 paid by CCT to Radom.
[279Q] 17/12/97	US$14.25 million paid by Nash Investments to Bluzwed from US$100 million paid by CCT to Nash in December 1997. At least US$5.445 million of this amount was applied by Bluzwed to Newnicom, a company involved in acquiring an interest in the Nikolaev Alumina Plant, on 19 December 1997.
[276A] 12/2/98	US$1,275,493 paid by Arufa to Blonde on behalf of Maddox.
[276B] 12/2/98	US$1,780,000 paid by Arufa to Blonde on behalf of Gresham.
[277] 20/3/1998	US$5,000,000 paid by Arufa to Maddox which was used in the funding of the Tajik Aluminium Plant as follows: Alutrans, US$1,100,000; AZI, US$200,000; Trans Yula, US$100,000; ShurchiKhleboprodukt, US$100,000 and Elsun US$3,500,000.
[278] 24/3/1998	US$4,000,000 paid by Arufa to Bluzwed Metals used as a loan to Elsun in connection with TADAZ.
[279] 24/3/1998	US$7,000,000 paid by Arufa to Basoda Enterprises on behalf of Bluzwed which was transferred to a deposit account or as a loan to TADAZ and/or used to meet costs in relation to the Tajik Aluminium Plant.
[273A] 19/5/98	US$40,033.35 paid by Operator Trade Center to Benthen Consultants.

ANNEX 4 – EXAMPLES OF MR DERIPASKA'S SELECTIVE USE OF EVIDENCE IN HIS HEARSAY NOTICE OF 25 MAY 2012[595]

ORIGINAL TEXT	MR DERIPASKA'S HEARSAY NOTICE (highlighted
7. Chernoi and Makmudov owned and operated a vast business enterprise (the "Enterprise") with interests in aluminum, copper, steel, coal, and other products. 8. Various persons shared in the profits, operation, and management of the Enterprise, including Oleg Deripaska ("Deripaska"), who was responsible for operating and managing the aluminum division (Sibersky Aluminum or "SibAl") of the Enterprise, and Anton Malevsky, who was responsible for the "security" division of the Enterprise and managing relations with the local criminal organizations in the various regions in Russia where the Enterprise operated.	7. Chernoi and Makmudov owned and operated a vast business enterprise (the "Enterprise") with interests in aluminum, copper, steel, coal, and other products. 8. Various persons shared in the profits, operation, and management of the Enterprise, including Oleg Deripaska ("Deripaska"), who was responsible for operating and managing the aluminum division (Sibersky Aluminum or "SibAl") of the Enterprise, and Anton Malevsky, who was responsible for the "security" division of the Enterprise and managing relations with the local criminal organizations in the various regions in Russia where the Enterprise operated.
16. Makmudov demanded that I arranged for an interest in GOK to be transferred to the Enterprise at a meeting at the Luxor Restaurant at the Metropole Hotel in Moscow at which Malevsky, Deripaska, Kislin and Nekrich were present in November, 1999.	16. Makmudov demanded that I arranged for an interest in GOK to be transferred to the Enterprise at a meeting at the Luxor Restaurant at the Metropole Hotel in Moscow at which Malevsky, Deripaska, Kislin and Nekrich were present in November, 1999.
Question: Do you know anything regarding money laundry activities by the following people: Michael Cherney, Iskander Makhmudov, Anton Malevskiy and Oleg Deripaska or by Izmailovskaya group? **Answer**: Yes, I do know that the above people as well as Oygen Evgeniy ,Ashenbrener, citizen of Germany, Michael Nekrich, Polyakov (I do not know his name), and also Polyakov's son, Polyakov junior and Andrey Bokarev dealt with and are still dealing with criminal money laundry via legal bodies in Russia, such bodies, for example, as following: Uralskaya Mining and Smelting company, Kuzbas-Razrez-ugol, Prokopyevsk-ugol and Evraz-Holding. The structure as following: there are two flows. The first flow	**Question**: Do you know anything regarding money laundry activities by the following people: Michael Cherney, Iskander Makhmudov, Anton Malevskiy and Oleg Deripaska or by Izmailovskaya group? **Answer**: Yes, I do know that the above people as well as Oygen Evgeniy ,Ashenbrener, citizen of Germany, Michael Nekrich, Polyakov (I do not know his name), and also Polyakov's son, Polyakov junior and Andrey Bokarev dealt with and are still dealing with criminal money laundry via legal bodies in Russia, such bodies, for example, as following: Uralskaya Mining and Smelting company, Kuzbas-Razrez-ugol, Prokopyevsk-ugol and Evraz-Holding. The structure as following: there are two flows. The first flow
Question: What was role of Michael Chernoy, Oleg Deripaska and Iskander Makhmudov in regards to attempted takeover and monopolisation of Russian aluminium productions since 1990? **Answer**: I described this in my previous statements in great details.	**Question**: What was role of Michael Cherney, Oleg Deripaska and Iskander Makhmudov in regards to attempted takeover and monopolisation of Russian aluminium productions since 1990? **Answer**: I described this in my previous statements in great details.

595 See paragraph 270(3) above

ANNEX 5 – THE OWNERSHIP STRUCTURE OF SIBAL IN 1999

Percentage of Sibal / SaAZ (cumulative percentage)	**Direct holder of interest**	**Interest within Radom**
25.7% (25.7%)	OOO SA Holding	SA Holding was held 25/25/50 by, respectively, Marka (the sole beneficiary of which was Ms Tupikova as nominee for Mr Cherney), AMG-2 which was held by Ms Tupikova in the same way, and Aktsia (the sole beneficiary of which was Mr Deripaska's mother as nominee for Mr Deripaska).[596] Furthermore, SA Holding was connected to the Radom structure insofar as it was an intended recipient of dividends from entities with the Radom group.[597]
9.2% (34.9%)	ZAO Klarus Service	Within Radom. Klarus was a wholly owned subsidiary of Pecano Establishment, which was held directly by Radom.
3.1% (38%)	OOO Aktania	Within Radom. The sole shareholder of Aktania was Fastact, which in turn was held by Benet Invest & Trade, which was itself was held by Radom.[598]
8.5% (46.5%)	OOO Medal	Within Radom. A list of companies within the joint aluminium business disclosed by Mr Deripaska states that Medal was owned in the proportions 60/40 by, respectively, Gresham and Siberian Aluminium LLC.[599] The former was held directly by Radom. The latter was owned (from 8 February 1998), as to 99.25% by Fastact which, in turn, was held by Radom through Benet Invest & Trade as described above.
4.6% (51.1%)	Intermetal Holding SA	Within Radom. Intermetal was held by Alincor which, in turn, was held by Radom.
48.5% (99.6%)	AO Saaz ("Saaz")	Partly within Radom. Saaz owned by several entities, some of which were within the Radom structure. The major shareholders of Saaz in 1999 are set out below.

596 A register produced by Basic Element reflecting these interests as at January 2001 is at {46B/141/609}

597 See the corporate structure at {46B/140/608}

598 {27/3/71} ; {27/3/72}

599 {151/1/116}

Saaz 50% (50%) Sibal 24.25% (75.35%)	SA Holding	As described above, SA Holding was owned 50/50 between Mr Cherney and Mr Deripaska through their respective nominees.
Saaz 10.31% (60.31%) Sibal 5% (79.25%)	OOO Rostar Holding	Rostar Holding was directly held by Radom.[600] Furthermore, Rostar Holding's shareholders in 1999 were Rostar Holding SA, Luxembourg (50%) and Gresham Investment Ltd (50%), both of which were also held by Radom.
Saaz 12.61% (72.92%) Sibal 6.12% (85.37%)	Gavroche	Within Radom.[601]
Saaz 14.14% (87.06%) Sibal 6.86% (92.23%)	ZAO Credit Suisse First Boston held this share as nominee for Strongman and Greenslade.[602]	It is understood that these entities were held on behalf of TWG.
Saaz 8.85% (95.91%) Sibal 4.29% (96.52%)	Property Fund of the Republic of Khakasia	This block of shares was retained by the Property Fund of Khakasia.

600 {27/3/71} ; {18D/1/298}
601 {18D/1/298}
602 {46B/108/497B}